IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **25.06.2019**

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THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.14257 of 2019

Tvl.Kadimi Special Steels Pvt. Ltd.
Represented by its Senior Finance Manager
Mr.S.Ganesh Kumar. .. Petitioner

vs.

1.The Commissioner
Ezhilagam Chepauk
Chennai – 600 005.

2.The Assistant Commissioner (ST)
Sriperumbudur Assessment Circle
No.4/109, Varadharajapuram
Chennai – 600 123.

3.The Commercial Tax Officer (ST)/
State Tax Officer
Sriperumbudur Assessment Circle
No.4/109, Varadharajapuram
Nazarathpet, Chennai – 600 123. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus call for the records of the 2nd respondent impugned Letter TIN 33451668244/2017-18, CST:1124498/2017-18 dated 23.04.2019 and quash the same and consequently direct the second respondent to permit the petitioner to download the 'C' form and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.B.Ramesshkumar

For Respondents : Ms.G.Dhanamadhri
Government Advocate

ORDER

Mr.B.Ramesshkumar, learned counsel on record for writ petitioner and Ms.G.Dhanamadhri, learned Government Advocate on behalf of all the three official respondents are before this Court.

2. With consent of learned counsel on both sides, main writ petition is taken up for disposal.

3. There is no disputation or disagreement between the two learned counsel before this Court that this matter is squarely covered by an earlier order made by this Court in W.P.No.15233 of 2019 with only one difference.

4. In the earlier order, the request of writ petitioner seeking permission for downloading 'C' Form for inter-state purchase of High Speed Diesel was pending and therefore, a mandamus was issued, but in the instant case, request of writ petitioner in this regard has been negatived, vide order dated 23.04.2019 made by second respondent (hereinafter impugned order for brevity). Therefore, prayer in instant writ petition is for certiorarified

mandamus, whereas prayer in the earlier order was only for mandamus. There is no disputation or disagreement that the issue is squarely covered by the said earlier order and therefore, this Court deems it appropriate to extract the entire earlier order, which reads as follows:

> *2. With the consent of both the learned counsel i.e., counsel for writ petitioner as well as the Revenue counsel, the main writ petition itself is taken up for disposal, though this writ petition is listed before this Court today under the caption 'FOR ADMISSION' in the motion list.*
>
> *3. Both the learned counsel submitted, without any dispute or disagreement, that the entire matter turns on a very narrow compass and therefore, the main writ petition itself can be disposed of.*
>
> *4. The central theme of the entire writ petition is purchase of High Speed Diesel Oil for use in generation and distribution of electricity and other forms of power.*
>
> *5. The petitioner was making inter-state purchases of High Speed Diesel Oil on concessional rate of tax at 2% by way of 'C' forms. After introduction of 'Goods and Services Tax' ('GST' for brevity), petitioner continued to purchase High Speed Diesel Oil, but, however, they could not download the 'C' forms. When the petitioner enquired with the Revenue Department, the petitioner was informed that after introduction of GST regime on and with effect from 01.07.2017, the petitioner was not entitled to make purchase of High Speed Diesel Oil from other States on concessional rate of tax i.e., at 2% and therefore, the Department's site has been blocked to deny access to the petitioner and other similarly placed persons from downloading 'C'*

forms. It may not be necessary to advert to those facts any further, as there is virtually no dispute on the factual aspects of the matter as well as the obtaining legal position as of today.

6. The undisputed obtaining legal position as of today is that, the above said issue came up for consideration before another Hon'ble Judge of this Court in a batch of writ petitions being W.P.Nos.19458 to 19460 of 2018 etc., being a batch of 71 writ petitions and a common order came to be passed by another Hon'ble Judge on 26.10.2018. In the batch, the lead matter is 'The Ramco Cements Ltd.,' and therefore, the aforesaid order shall be referred to as 'Ramco Cements matter'.

7. In the Ramco Cements matter, this Court allowed the writ petitions filed by the assessees and directed the Revenue to permit the petitioners assessees to download 'C' forms. It is not in dispute (as submitted by the learned counsel for Revenue) that though an intra Court appeal has been preferred against Ramco Cements matter with a delay of three days, the same remains unnumbered as of today. In other words, Ramco Cemets authored by another Hon'ble Judge of this Court is holding the field as of today.

8. Post Ramco Cements matter, a similar situation came up before another Hon'ble Single Judge vide W.P.No.12520 of 2019 and the same came to be disposed of on 26.04.2019. In the said order, learned Single Judge held that till such time the order of Ramco Cements is either stayed or reversed it is incumbent upon all Assessing Authorities within the State of Tamil Nadu to apply the rationale and the principle laid down in Ramco Cements with regard to pending assessments. This position is not disputed.

9. In other words, there is no dispute or disagreement that the instant writ petition falls clearly within the four corners of

Ramco Cements case as well as the aforesaid order of another Hon'ble Single Judge made in W.P.No.12520 of 2019 (order dated 26.04.2019) in 'Southern Cotspinners Coimabatore Private Limited'. The most relevant paragraphs are paragraphs 5 and 6 of Southern Cotspinners Coimabatore Private Limited case and the same read as follows:

'5. In such circumstances, till such time the order of this court in the case of M/s. Ramco Cements Ltd (supra) is either stayed or reversed it is incumbent upon all Assessing Authorities within the State of Tamil Nadu to apply the rationale of the decision to all pending assessments. The Petitioner in this Writ Petition has stated on affidavit that it is unable to download the 'C' forms from the websites as the same stand blocked from use. Upon enquiry with the Assessing Authorities, they have been informed that the benefit of the decision in M/s Ramco Cements Ltd can be extended only to those dealers that are party to the decision. This stand is unacceptable in so far as the decision of this Court as well as other High Courts, one of which has been confirmed by the Supreme Court, are decisions in rem, applicable to all dealers that seek benefit thereunder, of course, in accordance with law.

6. In the aforesaid circumstances and in the light of the order passed above, this Writ Petition is allowed. Consequently, necessary action to be taken by the department, forthwith. No costs. Connected Miscellaneous Petition is closed.'

10. In the light of the narrative supra and in the light of the trajectory, which this matter has taken at the admission stage, it follows as a natural sequitur that the instant writ petition stands allowed. Consequently, necessary action has to be taken by the Revenue/Department/Respondents forthwith which *in any case shall not be more than 5 working days from the date of receipt of copy of this order.*

11. This writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

5. In the light of the narrative thus far, the following order is passed:

a) Impugned order being order dated 23.04.2019 bearing Reference TIN 33451668244/2017-18, CST:1124498/2017-18, made by second respondent is set aside.

b) Instant writ petition is allowed. Consequently, necessary action has to be taken by the Revenue/Department/Respondents forthwith which in any case shall not be more than 5 working days from the date of receipt of copy of this order.

6. This writ petition is allowed. No costs.

25.06.2019

vsm

Speaking Order
Index : Yes/No
Internet: Yes/No

To

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