IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2019

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THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.NO.19859 OF 2019
&
W.M.P.No.19395 of 2019

M/s.Deejay Minerals Pvt. Ltd.,
Represented by its Managing Director
No.27, 2nd Cross Street,VGP Murphy Square,
St. Thomas Mount, Chennai - 600 016 ..Petitioner

.Vs.

1.The State of Tamil Nadu
Represented by the Secretary to Government
Commercial Taxes Department
Fort St. George
Chennai - 600 001.

2.The Principal Commissioner & Commissioner of
Commercial Taxes
Ezhilagam, Chepauk
Chennai - 600 005.

3.The Assistant Commissioner (ST)
Alandur Assessment Circle

4.The Joint Commissioner (ST)
Territorial, Chennai (East)

5.The Joint Commissioner (ST)
Computer Cell
PAPJM Building, Greams Road
Chennai - 600 006 .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the third respondent to include "High Speed Diesel Oil" in the CST Certificate of registration of the petitioner as an item eligible for purchase in their mining activity and to issue "C" forms under the Central Sales Tax Act, 1956 read with the Central Sales Tax (Registration and Turnover) Rules, 1957 to the petitioner for the purchase of High Speed Diesel from the suppliers in other states.

For Petitioner : Mr.Adithya Reddy

For Respondents : Mr.V.Haribabu
Additional Government Pleader

ORDER

Mr.Adithya Reddy, learned counsel on record for sole writ petitioner is before this Court. Mr.V.Haribabu, learned Additional Government Pleader accepts notice on behalf of all the respondents.

2. With consent of both the learned counsel i.e., counsel for writ petitioner as well as Revenue counsel, 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 learned counsel submitted, without any disputation or disagreement, that the entire matter turns on a very narrow compass and therefore, main writ petition itself can be disposed of.

4.Notwithstanding the language in which the prayer is couched in the instant writ petition, it is submitted that this matter is covered by order dated 13.06.2019 made in W.P.No.16221 of 20192. Therefore, notwithstanding the prayer in the instant writ petition, the order passed earlier in the aforesaid writ petition will govern the instant writ petition also. For the sake of clarity and ease of reference, the aforesaid earlier order is extracted and reproduced hereunder:-

> 'Mr.N.Inbarajan, learned counsel on record for the sole petitioner is before this Court. Ms.Dhanamadhri, learned Government Advocate (Tax) accepts notice on behalf of both the respondents.
>
> 2. With the consent of both the learned counsel i.e., counsel for the 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 of 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 Service 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 assessee and directed the Revenue to permit the petitioners assessee 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 Cements 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 Coimbatore Limited'. The most relevant paragraphs are paragraphs 5 and 6 of Southern Cotspinners Coimbatore 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 Sate 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 devision of this Court as well as other High Courts, 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.'

The above order more particularly operative portion being Paragraph 10 will govern the instant writ petition.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Secretary to Government,
State of Tamil Nadu
Commercial Taxes Department
Fort St. George, Chennai - 600 001.

2.The Principal Commissioner & Commissioner of
Commercial Taxes
Ezhilagam, Chepauk, Chennai - 600 005.

3.The Assistant Commissioner (ST)
Alandur Assessment Circle

4.The Joint Commissioner (ST)
Territorial, Chennai (East)

5.The Joint Commissioner (ST)
Computer Cell
PAPJM Building, Greams Road
Chennai - 600 006

+1cc to Mr.Adithya Reddy, Advocate, SR.No.57849
+1cc to the Special Govt.Pleader, (Taxes) Vide Sr.No.59387

W.P.No.19859 of 2019 &
W.M.P.No.19395 of 2019

Kak(21/08/2019)