IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.08.2019

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THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.25484 of 2019

NKCM Spinners Pvt. Ltd
No.77 & 77/1, West Colony,
Komarapalayam
Represented by its Manager
G.Palanisamy.

... 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 of State Taxes
Commercial Tax Department
Sankari.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents 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 in view of the recent judgment dated 26.10.2018 passed by this Hon'ble Court in the case of M/s.Ramco Cements Ltd & others in W.P.Nos.19458 of 2018 to 19460 of 2018 and batch of cases and pass any 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.S.P.Parthasarathy

For Respondents : Mr.Mohammed Shaffiq,
Special Government Pleader
(Taxes)

ORDER

Mr.S.P.Parthasarathy, learned counsel on record for sole writ petitioner is before this Court. Mr.Mohammed Shaffiq, learned Special Government Pleader (Taxes) accepts notice on behalf of all the three respondents.

2. With consent of both 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 disputation 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 business activity and the purpose for which High Speed Diesel is used is articulated in paragraph No.4 of the affidavit filed in support of the instant writ petition, which reads as follows:

> '4.The relevant facts are as follows:-
>
> The petitioner is a company registered under the Indian Companies Act, 1956 engaged in the manufacture yearn and a registered dealer under the provisions of the Central Sales Tax Act, 1956 hereinafter referred to the CST Act and was under erstwhile Tamil Nadu Value Added Tax Act, 2006 and now under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act, 2017), the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as the TNGST Act, 2017) and the integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the IGST Act, 2017) on the files of the third respondent. I state that as per the registration certificate of the petitioner both under Section 7(1) and 7(2) of the CST Act with effect from 23.08.2011, High Speed Diesel Oil (for short HSD hereinafter). In other words for the purpose of captive power generation, the petitioner has effected purchase of High Speed

Diesel from the suppliers in the other State. To that effect the third respondent has also issued a certificate dated 18.03.2008 to the effect that the petitioner is eligible for interstate purchase of high speed diesel oil use in captive power generation with effect from 18.03.2008.'

5. In this writ petition, 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 i.e., 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 a Hon'ble Single Judge on 26.10.2018. In the batch, the lead matter is 'The Ramco Cements Ltd.,' and therefore, this common order dated 26.10.2018 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 Cements authored by a 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 matter 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 Private 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 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.
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> 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 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 a copy of this order.

11. This writ petition is allowed. No costs.

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 of State Taxes
Commercial Tax Department
Sankari.

+1cc to Mr.R.S.Pandiyaraj, Advocate Sr.73689
+1cc to the Special Government Pleader Sr.74940

W.P.No.25484 of 2019

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srg 18/09/2019