BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.07.2019**

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)No.15641 of 2019
and W.M.P.(MD)No.12317 of 2019

M/s.Maris Associates (P) Ltd.,
Represented by its Executive Director M.V.Sivaraman,
No.168, North Cotton Road, Tuticorin. ...Petitioner

-Vs-

1.The Assistant Commissioner (CT)-III,
Commercial Taxes Building,
Tuticorin.

2.The Principal Secretary/
Commissioner of State Taxes,
Ezhilagam, Chepauk, Chennai. ...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the first respondent to issue “C” forms under the Central Sales Tax Act, 1956 read with the Central Sales Tax (Registration and Turnover) Rules, 1957 to the petitioners for the purchase of High Speed Diesel from the suppliers in other States in view of the Judgment dated 25.09.2018 passed by the Hon’ble Madras High Court in the case of M/s.Ramco Cements Ltd & Others in W.P.Nos.19458 of 2018 to 19460 of 2018 for use in the generator for generating electricity for the purpose of manufacture.

For Petitioner : Mr.S.Karunakar

For Respondents : Mr.A.Thiyagarajan
Government Advocate

ORDER

Petitioner prays for a Mandamus directing the first respondent / Assistant Commissioner (CT)-III to issue 'C' forms under the Central Sales Tax Act, 1956 read with the Central Sales Tax (Registration and Turnover) Rules, 1957 for the purchase of High Speed Diesel from suppliers in other States.

2. At the outset, Mr.S.Karunakar, learned counsel for the petitioner submits that the issue in regard to entitlement to 'C' Forms for purchase of High Speed Diesel from supplies outside Tamil Nadu, to enable the dealers to seek a concessional rate of tax, is covered in favour of the assessee by a decision of this Court in *M/s*

Ramco Cements Ltd. V. The Commissioner of Commercial Taxes (W.P.Nos.19460 of 2018) dated 26.10.2018 in a batch of over fifty (50) Writ Petitions.

3. A learned Single Judge of this Court in considering the issue held categorically that the benefit of the concessional rate is available to dealers who purchase High Speed Diesel from neighbouring States by way of inter-state sales. Reference is made to the decisions of other Courts that have considered an identical issue, holding the same in favour of the assessee. In fact, the decision of the Punjab and Haryana High Court has been carried to the Supreme Court in special leave and has been confirmed in *State Of Haryana & Others Vs. Caparo Power Ltd. & Others* in Special Leave Petition (Civil No. 20572 of 2018). The issue has also been considered in *Hindustan Zinc Limited & Several Others Vs. The State of Rajasthan & others* (S.B.Civil Writ Petition No.5506/2018 dated 18.05.2018) and *Shree Raipur Cement Plant (A unit of Shree Cement Limited) Vs. State of Chhattisgarh, Finance department (Tax Division)* (W.P.(T) No.83 of 2018 dated 18.05.2018) and held in favour of the assessee.

4. Mr.A.Thiyagarajan does not dispute the above position. However, he submits that the State has filed an appeal challenging the order of the learned Single Judge in the case of *M/s. Ramco Cements Ltd (supra)* with a delay of 3 days, which is pending consideration before the Division Bench.

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 circumstance 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.

Sd/-
Assistant Registrar(Crl. Side)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Assistant Commissioner (CT)-III,
Commercial Taxes Building,
Tuticorin.

2.The Principal Secretary/
Commissioner of State Taxes,
Ezhilagam, Chepauk, Chennai.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-76737[F] dated 22/07/2019)

+1 CC to M/s.SPL GP (SR-76862[F] dated 23/07/2019)

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gns/tm
JM/17.09.2019/3P/5C