IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2020

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THE HON'BLE MR. JUSTICE C. SARAVANAN

W.P. Nos. 34583 to 34585 of 2015
and
M.P. Nos. 1 of 34583, 1 of 34584 and 1 of 34585 of 2015

Madurai Power Corporation Limited,
Represented by its Managing Director,
P.R.Balakrishnan,
Old No.2, New No.3,
Second Street, Subbarao Avenue,
College Road,
Chennai - 600 006. ... Petitioner in all writ petitions

-vs-

The Assistant Commissioner (CT),
Mylapore Assessment Circle,
No. 46, Greenways Road,
Chennai - 600 028. ... Respondent in all writ petitions

Prayer in W.P. No. 34583 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the impugned proceedings of the respondent passed in CST/790084/2011-12 dated 30.09.2015 and quash the same.

Prayer in W.P. No. 34584 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the impugned proceedings of the respondent passed in CST/790084/2009-10 dated 30.09.2015 and quash the same.

Prayer in W.P. No. 34585 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the impugned proceedings of the respondent passed in CST/790084/2007-08 dated 30.09.2015 and quash the same.

For Petitioner in all W.P's : Mr. R.Venkatavaradan
For Mr. N.Murali
For Respondent in all W.P.'s : Mr. R.Swarnavel
Government Advocate

ORDER

By this common order all the three writ petitions are being disposed. By the impugned orders order dated 30.09.2015 the respondent has imposed penalty under Section 10A of the Central Sales Tax Act, 1956. The operative portion of the impugned order read as under:

> “The claim of the dealers that the commodity 'Oil' also includes Petroleum Products and Low Sulphur Heavy Stock Furnace Oil is one of the Petroleum Products is only farfetched. The sale of Low Sulphur Heavy Stock Furnace Oil is taxable at 14.5% under residuary entry 69 of Part-C of the First Schedule to the TNVAT Act, 2006. The Authority for Clarification and Advance Ruling has also in its procs. In ACAAR No.25/2015-16 dated 22.06.2015 has held that 'Low Sulphur Heavy Stock (LSHS) is taxable at 14.5% under Part-C of the First Schedule to the TNVAT Act, 2006.....
>
> It is, therefore, evident that the dealers have falsely represented when purchasing Low Sulphur Heavy Stock Furnace Oil that the commodity is covered by their Certificate of registration and issued Form-'C' against the purchases of the commodity. Hence, the dealers are punishable with simple imprisonment which may extend to six months, or with fine or with both. However, in lieu of prosecution, penalty of a sum not exceeding one and half times the tax which would have been levied under Section 8(2) in respect of sale of the goods is called for in their case, as per the provisions of Section 10-A of the CST Act, 1956.”

2. The petitioner is a power generating company had obtained Central Sales Tax Registration on 06.06.2000. In the said registration, the petitioner was entitled to procure machinery and spares; transformers and spares; generators and spares; power generation and distribution and transmission by furnace oil for generation and distribution of electricity or any other form of power.

3. Later, the petitioner's afore said registration certificate was amended on 24.07.2001 for procuring machinery and spares; transformer and spares; generator and spares; power generation and distribution and transmission and oil with effect from 06.06.2000.

4. Later the registration was further altered on 01.03.2012 with effect from 29.02.2012 by specifically including lubricant oils, transformer oils, low sulphur heavy stock-furnace oil, wax residue and high speed diesel.

5. Under these circumstances, it was viewed by the respondent that procurement of Low sulphur Heavy Stock Furnace Oil from oil companies against C-Form was improper for the period in dispute namely the assessment years 2007-2008, 2009-2010 and 2011-2012.

6. It is the contention of the petitioner that since oil was included in the registration with effect from 06.06.2000, there was nothing irregular about procurement of Low Sulphur Heavy Stock Furnace Oil against C Form.

7. On the other hand it was the contention of the respondent that Low Sulphur Heavy Stock Furnace Oil does not feature in the CST Registration during the period in dispute and therefore petitioner was liable to pay penalty equal to 150% of the tax which ought to have been charged in terms of Section 10A of the Act.

8. The petitioner replied to respective notices issued for the respective assessment years and submitted that petitioner was entitled to procure goods against C-Form for use in the generation or distribution of electricity or any other form of power.

9. It was therefore submitted that there was nothing wrong or irregular with the procurement made by the petitioner as Low Sulphur Heavy Stock Furnace Oil for generation, distribution and transmission of power.

10. It is further submitted that even otherwise the registration was altered from furnace oil simplicitor to Power Generation, Distribution, Transmission and Oil required for the aforesaid purpose. It is therefore submitted that Low Sulphur Heavy Stock Furnace Oil was in accordance with the registration obtained by the petitioner.

11. In this connection reliance was placed on the decision of Hon'ble Supreme Court in M.P.State Agro Industries Development Corporation Ltd Vs. Jahan Khan (2007) 10 Supreme Court Cases 88 wherein it was held that in appropriate cases despite availability of alternative remedy, writ petition can be filed and entertained where the petitioner seeks enforcement of his fundamental right; where the order of the proceedings are wholly without jurisdiction or where the act is challenged. In this case, it is submitted that the impugned orders were without jurisdiction.

12. In this connection, reference was made to the decision of the full bench of the Hon'ble Supreme Court in Calcutta

Discount Co ltd Vs. Income Tax Officer AIR 1961 SC 372.

13. On the merits reference was made to the decision of this Court rendered in State of Tamil Nadu Vs. Nu.Tread Tyres (2006) 148 STC 256 and to the decision of this Court in State of Tamil Nadu Vs S.D.Rangwala and Co (1988) 108 STC 521 and in West Coast Industries (Exports) Private Limited Vs. State of Tamil Nadu (2013) 57 VST 373.

14. It has been specifically stated that to impose penalty under Section 10-A of the Central Sales Tax Act, 1956, the department must prove the existence of facts and circumstances constituting the offence and an assessee cannot be held guilty of offence under section 10(b) if the assessee entertained a bona fide belief.

15. On behalf of the respondent it was contended that the petitioner has an alternate remedy by way of an appeal before the Deputy Appellate Commissioner and therefore these Writ Petitions are liable to be dismissed.

16. On merits it was further submitted that the petitioner had mis-represented and procured Low Sulphur Heavy Stock Furnace Oil from different oil companies from other states during the material period against C Form as the petitioner's registration was confined only to "Oil" and not to Low Sulphur Heavy Stock Furnace Oil.

17. I have considered the arguments advanced on behalf of the petitioner and the respondents. There is no doubt that the petitioner is engaged in generation of electricity. For generation of electricity the petitioner is required to use Low Sulphur Heavy Stock Furnace Oil. Earlier when the petitioner had obtained certificate of registration on 06.06.2000, there was a specific reference to Furnace Oil.

18. Later, the registration was altered as Power Generating and Distributions and Transmission and Oil. This amendment was made to the registration certificate with effect from 06.06.2000 vide amendment to the registration certificate issued on 24.07.2001.

19. Thus, it is evident that petitioner was entitled to procure oil of every description as long as it was intended for generation of electricity and power along with, the other goods specified in the Certificate of Registration, oil would include Low Sulphur Heavy Stock Furnace Oil. It is also not the case of the respondent that Low Sulphur Heavy Stock Furnace Oil was not used for generating electricity and power.

20. Therefore, the conclusion arrived in the impugned orders that the petitioner had wrongly procured Low Sulphur Heavy Stock Furnace Oil against C-Form cannot be countenanced.

21. I am therefore of the view that the impugned order suffers from infirmity and has been passed with a revenue bias in mind. Under the circumstances, the impugned orders are liable to be set aside and these writ petition are liable to be allowed. Accordingly, these Writ Petitions are allowed and the impugned orders are set aside. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Mylapore Assessment Circle,
No. 46, Greenways Road,
Chennai - 600 028.

+3 ccs to M/s. N.Murali ,Advocate Sr.No.11039
+1 cc to The Government Pleader, Sr.No. 10974

W.P. Nos. 34583 to 34585 of 2015
and
M.P. Nos. 1 of 34583, 1 of 34584 and 1 of 34585 of 2015

NRJK(CO)
RMP(29/09/2020)