IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2020

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THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Writ Petition No.8620 of 2020 and

W.M.P.Nos.10432 to10434 of 2020

M/s.Vijay Cements
rep. By its Manager
S.Kanagasabapathi
6B Keezha Vaniya Chetty Street
Woraiyur, Tiruchirapalli - 620 003.

Factory at
446/3A, 446/3B Velakalpatty
Puthanampatty (PO)
Musuri Taluk, Tiruchirappalli-621 007. ... 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 and
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-600 005.

3.The Assistant Commissioner (ST),
Woraiyur Assessment Circle,
C/2, Second Floor, 2nd Cross, Thillai Nagar West,
Tiruchirappalli - 620 018.

4.The Joint Commissioner (CT)
Commercial Taxes Buildings, Court Compound
Cantonment, Tiruchirappalli - 620 001. ... Respondents

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India to issue a writ of Certiorarified mandamus to call for the records of the second respondent in impugned Letter no.CC4/678/2012 dated 31.05.2018 and quash the same as illegal, incompetent and without jurisdiction and further direct the 2nd to 4th respondents herein to issue “C” declaration forms under the Central Sales Tax Act, 1956 to the petitioner for their purchases of High Speed Diesel oil from the suppliers in other States.

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For Petitioner : Mr.Lakshmi Narayanan for
M/s.Kinsgly Solomon.J.

For Respondents : Mr.ANR.Jayaprathap,
Additional Government Pleader

O R D E R

Mr.A.N.R.Jayaprathap, learned Additional Government Pleader takes notice for the respondents. By consent of both the parties, the writ petition is taken up for final disposal at the time of admission itself.

2.According to the petitioner, they are lessee of lime stone quarry and manufacturer of cement. For their entire activities, they consume a large quantity of High Speed Diesel Oil, which they purchase from the suppliers of within as well as outside the State. To avail the concessional rate of tax at 2% on inter-state purchases, they are required to furnish “C” forms. While the things stood thus, the second respondent issued a circular dated 31.05.2018, to all the Joint Commissioners (Territorial), giving instructions that all the registered dealers, who have migrated to GST, are not misusing the 'C' form declaration for the purpose of effecting purchase of petroleum products and using it for manufacture of other goods that are administered under GST Act, 2017. Further, direction was issued to take necessary action against those dealers. Following the same, the third respondent issued a notice dated 07.09.2018 proposing to levy penalty under Section 10A of the Act, stating that the petitioner purchased High Speed Diesel Oil from the months of July 2017 to September 2017 to the total value of Rs.32,80,853/- by issuing 'C' form for the same. Subsequently, the third respondent issued a certificate on 21.11.2019 stating that the petitioner is entitled to purchase HSD oil from 20.11.2019 for use in the mining/ generation of electricity and permitted to download 'C' form for the purchases made during the period in question. However, there is no modification with regard to levy of penalty. Hence, the petitioner has preferred this writ petition to challenge the said circular dated 31.05.2018 issued by the first respondent and consequently direct the respondents 2 to 4 to issue 'C' declaration forms under the CST Act, 1956 for their purchases of HSD oil from the suppliers of other States.

3.The learned counsel for the petitioner submitted that the issue involved herein has already been dealt with by a Division Bench of this Court in Commissioner of Commercial Taxes, Chennai vs. The Ramco Cements Ltd., [W.A.Nos.3403, 3413, 3414 and 2812 of 2019 dated 09.03.2020] and held at paragraph Nos.39, 40 and 41, as follows:-

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"39.Therefore, if a Dealer has a right to sell as well the restricted six items under CST Act, one fails to understand as to how their right to purchase those goods at present time under the existing Registration Certificates can be taken away merely because they are not selling those goods. If sale of the goods was the only criteria of registration under the CST Act, the consequent amendments would not have allowed concessional rate of tax for purchase of those six commodities for user in activities like Mining or Telecommunication Networks, where no such resale or use in manufacturing is involved. Therefore, such a right is equally available to other industries like Cement Industries and the same cannot be denied to them. That would result in an invidious classification in violation of Article 14 of the Constitution of India, which is neither envisaged nor is called for. Therefore, the contentions raised on behalf of the Revenue are not sustainable at all.

40.Consequently, we are of the opinion that the Writ Appeals filed by the Revenue have no merits and deserve to be dismissed and respectfully agreeing with the views expressed by the other High Courts and confirming the view of the learned Single Judge in the impugned Judgement in Appeal before us we dismiss the present Writ Appeals filed by the State. No order as to costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

41.The Appellant State and the Revenue Authorities are directed not to restrict the use of 'C' " Forms for the inter-State purchase of six commodities by the Respondent/Assessees and other registered Dealers at concessional rate of tax and they are further directed to permit Online downloading of such Declaration in 'C' Forms to such Dealers. The Circular letter of the Commissioner dated 31.05.2018 stands quashed and set aside along with the consequential Notices and Proceedings initiated against all the Assessees throughout the State of Tamil Nadu."

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The learned counsel further submitted that following the aforesaid decision of the Division Bench, this Court, in an identical situation, by order dated 01.06.2020 allowed the writ petitions viz. WP.No.7282, 7284 and 7285 of 2020 filed by M/s.Birin Spinning Mills Ltd and directed the department to take necessary action forthwith. Stating so, the learned counsel prayed for a similar order in this writ petition as well.

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4.The learned Additional Government Pleader (Taxes) appearing for the respondents fairly conceded the submissions so made by the learned counsel for the petitioner.

5.This Court has considered the submissions made on either side and perused the decisions referred to above. Since the subject matter in issue has already been decided by the Division Bench of this Court and the impugned circular has also been quashed, vide judgement dated 09.03.2020 in WA.Nos.3403/2019 etc batch of cases, there is nothing to quash again. Hence, this Court directs the respondents to consider the claim of the petitioner and pass appropriate orders, in the light of the said Division Bench decision, within a period of four weeks from the date of uploading the copy of this order in the web site.

6.With the above direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CS-)

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Sub-Assistant Registrar

To

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