IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2020

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THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Writ Petition No.8669 of 2020 and

W.M.P.No.10503 of 2020

M/s.Mohan Mushroom Farms.,
Represented by its Partner,
Mr.A.Mohanraj,
S.F.No.561, Sampala Thottam,
Valasupalayam Village,
J.Krishnapuram (Post)
Sulur (T.K), Coimbatore. ... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Palladam Assessment Circle,
Tirupur.

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

3.The Joint Commissioner (ST),
Territorial, Coimbatore.

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

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the first respondent to include the "High Speed Diesel " in the CST certificate of registration of the petitioner (based on the on-line application dated 3.2.2020 made in Acknowledgement No.50200019584892 dated 4.2.2020 and a subsequent application -2- dated 6.2.2020 filed though registered post) as an item eligible for inter-State purchase 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 in view of the law laid down by the Hon'ble Madras High Court in the case of M/s.Ramco Cements Ltd and others in W.P.Nos.19459/2018 and batch of cases by an order dated 26.10.2018 and affirmed by the Hon'ble Division Bench of the Madras High Court in the case of Commissioner of Commercial Taxes, Chennai Vs The Ramco Cements Ltd in W.A.Nos.3403,3413,3414 and 2812/2019 by an order dated 9.3.2020 and pass any such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case

For Petitioner : Mr.P.Rajkumar

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.Seeking a direction to the first respondent to include the "High Speed Diesel " in the registration certificate of the petitioner as an item eligible for inter-State purchase and to issue "C " forms under the Central Sales Tax Act, 1956 r/w Central Sales Tax (Registration and Turnover) Rules, 1957 for purchase of High Speed Diesel from the suppliers in other States, the present writ petition came to be filed.

3.It is the case of the petitioner that they are running mushroom farms and a registered dealer on the file of the first respondent. As per the registration certificate, both under Sections 7(1) and 7(2) of the CST Act with effect from 19.02.2016, they are entitled to purchase generator to use in the generation of electricity. However, they were purchasing the High Speed Diesel Oil from local suppliers on payment of higher rate of tax, whereas, as per sub sections (1) and (3) of section 8 of the CST Act, they are entitled to procure High Speed Diesel at a concessional rate of tax at 2% from the other State suppliers. Hence, they made a request to the first respondent through online application on 03.02.2020 and submitted a letter dated 06.02.2020 by registered post to include "High Speed Diesel Oil" in their registration certificate and the said applications are pending without any consideration. Hence, this writ petition.

4.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:-

> "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.
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> 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.
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> 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.”

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.

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

6.Considering the facts and circumstances of the case and having regard to the aforesaid submissions made by the learned counsel for the petitioner and also following the earlier decisions rendered by this Court as referred to above, the first respondent is directed to dispose of the on-line application dated 03.02.2020 and the subsequent application dated 06.02.2020 sent by registered post by the petitioner, on merits and in accordance with law and also in the light of the aforesaid decisions rendered by this Court, within a period of four weeks from the date of uploading the copy of this order in the website.

7.Accordingly, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

jbm
To

1.The Assistant Commissioner (ST),
Palladam Assessment Circle,
Tirupur.

2.The Principal Commissioner &
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