

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2020

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NOS.8671, 8672 & 9930 OF 2020

AND

WMP.NOS.10507, 10508, 10509, 12070 & 12071 OF 2020

Sir Venkatramanaswamy Blue Metals
Rep by its Managing Partner MR. M. Sivanandam
No 128 NA old Bye pass Road Karur-639001.

.. Petitioner in W.P.No.8671 of 2020

Shri Selva Vinayaga Blue Metal,
Rep by its Managing Partner,
NO 162/1, Thalayithupatti Kuppam Post,
Kuppam Village, Aravakurichi Taluk,
Karur- 639111.

.. Petitioner in W.P.No.8672 of 2020

R.Gunasekaran
Proprietor Sri Vetrivelan Blue Metal,
487/B1, covai Road Udayampalayam Road,
Nalligoundanvalas Godanthur,
Karur- 639206

.. Petitioner in W.P.No.9930 of 2020

Vs

1 The Assistant Commissioner
(ST) Karur-2 (Erstwhile South) Assessment Circle
Karur.

2 The State of Tamil Nadu
Rep by the Secretary to Govt.
Commercial Taxes Department
Fort.St.George, Chennai-9

... 1st & 2nd respondent in
W.P.No.8671 of 2020

1 The Commercial Tax Officer,
Office of the Asst Commissioner,
Karur West Assessment Circle, Karur.

2 The Joint commissioner,
Territorial Erode District, Erode.

... 1st & 2nd respondent in
W.P.No.8672 of 2020

1 The Assistant Commissioner (ST,
Karur North Assessment Circle, Karur.

2 The Joint commissioner (ST)
Territorial Erode District Erode.
Erode

...1st & 2nd respondent in
W.P.No.9930 of 2020

3 The Prl. Commissioner and Commissioner
of Commercial Taxes Ezhilagam
Chepauk, Chennai-5

4 The Joint Commissioner (ST)
Computer Cell PAPJM building Greams Road
Chennai-6.

... 3rd and 4th Respondents in all WPs

Prayer in W.P.No.8671 of 2020:-

Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus to call for the Impugned proceedings of the First Respondent in TIN NO 33513681349 Dated 7.2.2020 and quash the same and further direct the Respondents to include High Speed diesel in the CST Certificate of registration of the Petitioner as an Item eligible for the purchase and also 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 by the Petitioner from the suppliers in other States in the light of the law laid down by the Hon'ble Division Bench of this 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.

Prayer in W.P.No.8672 of 2020:-

Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus to call for the Impugned proceedings of the first respondent (Available in the CTD.tn.gov.inPortal) in Acknowledgement NO 50200019557604 dated 18.2.2020 and quash the same and for a direction to the respondents to include "High Speed Diesel" in the CST Certificate of registration of the Petitioner as an commodity

eligible for the purchase by the Petitioner for use in their mining activity and for generation of electricity and for a further direction 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 the light of the law laid down by this Court in the case of M/s.Ramco Cements Ltd. and others in WP.Nos.19459/2018 and batch of cases by an order dated 26.10.2018 and affirmed by the Hon'ble Division Bench of this 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.

Prayer in W.P.No.9930 of 2020:-

Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent (Available in the ctd.tn.gov.in portal) in Acknowledgment No 50200019022979 dated 9.1.2020 and quash the same and for a direction to the respondents to include "High Speed Diesel" in the CST certificate of registration of the petitioner as an commodity eligible for purchase by the Petitioner for use in their generation of electricity and for a further direction to issue C forms under 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 the light of the law laid down by the Hon'ble Division Bench of this 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.

For Petitioner : Mr.P.Rajkumar in all WPs

For Respondents: Mr.Mohammed Shaffiq,
Special Government Pleader in all WPs.

COMMON ORDER

Heard Mr.P.Rajkumar, learned counsel for the petitioners and Mr.Mohammed Shaffiq, learned Special Government Pleader for the respondents.

2. The petitioners in these Writ Petitions are dealers. Mr.Shaffiq, fairly submits that the issue involved in these Writ Petitions is squarely covered by a decision of this Court in W.P.Nos.4173 and 4176 in the case of M/s.Dhandapani Cement Private Limited Vs. The State of Tamil Nadu, wherein the

identical issue as arising before me has been considered and decided by me in the following terms:

'Mr.V.Haribabu, learned Additional Government Pleader (Taxes) takes notice for the respondents. By consent of both sides, final orders are passed in these Writ Petitions even at the stage of admission.

2. The petitioners in the Writ Petitions have expressed their difficulty in obtaining 'C' forms under the provisions of the Central Sales Tax Act, 1956 in order to avail concessional benefit of tax for purchase of High Speed Diesel from suppliers in other States.

3. At the outset, Mr.P.Rajkumar, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader for the revenue agree 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.

4. 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.

5. Mr.Haribabu does not dispute the above position. However, he maintains that the State proposes to challenge the order of the learned Single Judge in the case of M/s. Ramco Cements Ltd (supra) though no such appeal has been filed thus far.

6. 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 these Writ Petitions 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.

7. For the above reasons, these Writ Petitions are allowed. Consequently, necessary action to be taken by the department, forthwith. No costs. Connected Miscellaneous petitions are closed.'

3. The State has, after the date of the above order, filed a Writ Appeal in W.A.No.3403 of 2019 challenging the decision in the case of Ramco Cements (Supra) that has been considered and dismissed by a Division Bench of this Court on 09.03.2020 in the following terms:

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13. It is true that the liability to pay tax arises under the provisions of the CST Act only upon seller who effects the taxable sale in the course of inter-State Trade or Commerce and only such Dealers can initially obtain the registration under Section 7 (1) of the Act, but, the liability to pay tax on

purchase of goods is an independent liability of Purchasing Dealer also to pay tax. Section 7(1) only casts an obligation on the Seller liable to pay tax as per Section 6 and to obtain registration. It does not talk of registration or cancellation there of <http://www.judis.nic.in> Judgt. dt 9.3.2020 in W.A.Nos.3403/2019, etc. Commr. of Commercial Taxes & anr v. The Ramco Cements Ltd. 40/100 any purchasing dealer. Section 7(2) provides independent right of any Dealer to obtain registration under the provisions of the CST Act. The said provisions of Section 7(2) of the Act are in two parts which are joined by the words "or" which means independent clauses. In the first category, the Dealer is liable to pay tax under the Sales Tax law of the appropriate State and in the second category, where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in the State or part, as the case may be, may, notwithstanding that he is not liable to pay tax under the Act, apply for registration under the Act. Therefore, the liability to pay tax under the provisions of CST fixed on the Seller is not a condition precedent or the only contingency for getting himself registered under the provisions of the CST Act. Even a person, who is only purchasing goods in the inter-State Trade or Commerce, who may not be liable to pay tax under the provisions of CST Act as a Seller can also secure registration under the provisions of the said Act and can continue with it. Even a dealer liable to tax under State Sales Tax law, which may include even new State GST Act, 2017, can obtain registration under CST Act. In the present case, the Assessee, a Cement Company, continues to be liable to pay tax under local TNVAT Act, 2006 if it sells or purchases any of these six goods also. The TNVAT Act also has not been completely repealed but now applies only to these six commodities after 1.7.2017, as per Section 174 of the TNGST Act, 2017.

14. Therefore, on a conjoint reading of both sub-sections (1) and (2) of Section 7 of the CST Act, it is clear that the Respondents/Assessees and their likes can continue to have registration under the provisions of the CST Act and the contention raised on behalf of the Revenue that they have lost their entitlement to be so registered is misconceived and liable to be rejected. We, accordingly, reject the same.

15. The fact that the definition of 'goods' has been amended with effect from 1.7.2017 under the provisions of CST Act to restrict it to six commodities specified in Section 2(d) of the Act does not mean that the entire scope of the operation of CST Act has been amended. The rights of the purchasing Dealers of the goods including the rights to purchase at a concessional rate against Declaration in 'C' forms continues unabated under Section 8(3)(b) of the Act which has not been amended in 2017. The scope of the term 'goods' as defined in Section 2(d) of the Act does not obliterate such seamless flow of the <http://www.judis.nic.in> Judgt. dt 9.3.2020 in W.A.Nos.3403/2019, etc. Commr. of Commercial Taxes & anr v. The Ramco Cements Ltd. 42/100 inter-State Trade or the operatability of the CST Act for both Selling Dealers as well as Purchasing Dealers throughout the country. The Legislature never intended to do so while restricting the applicability of the CST Act only to six specified commodities and take them out of GST Law and taking all other commodities except the six specified items in the GST Tax Law Regime. Such a view on the part of the Revenue is self defeatative and cannot be countenanced by the court. The freedom of trade including the right to purchase in the course of inter-State Trade or Commerce enshrined in Article 301 read with Article 304(b) is not taken away by GST Regime laws.

.....

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 other High Courts and confirming the view of the learned Single Judge in the impugned Judgment 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 purchases of six commodities by the Respondent/Assesseees 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 31.5.2018 stands quashed and set aside along with the consequential Notices and Proceedings initiated against all the Assesseees throughout the State of Tamil Nadu.

4. Mr.Shaffiq states that the State intends to challenge the order in Writ Appeal by way of a Special Leave Petition.

5. As on date, the order in Writ Appeal is final, and following the rationale thereof, these Writ Petitions are allowed. The petitioners are entitled to the inclusion of 'High Speed Diesel Oil' as a commodity in the registration certificate. Let this exercise be carried out within a period of four (4) weeks from date of uploading of this order. The request of the petitioner for issuance of 'C' Forms is allowed as a consequence thereof. No costs. Connected Miscellaneous Petitions are closed.

सत्यमेव जयते Sd/-

Assistant Registrar(CS III)

//True Copy//

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Sub Assistant Registrar

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To

1 The Assistant Commissioner
(ST) Karur-2 (Erstwhile South) Assessment Circle
Karur.

- 2 The State of Tamil Nadu
Rep by the Secretary to Govt.
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Fort.St.George chennai-9
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Erode
- 7 The Prl. Commissioner and Commissioner
of Commercial Taxes Ezhilagam
Chepauk, Chennai-5
- 8 The Joint Commissioner (ST)
Computer Cell PAPJM building , Greams Road
Chennai-6.

+1cc to the Special Government Pleader (T), Sr.No.29324 to 29326

W.P.Nos.8671, 8672 & 9930 of 2020
and
WMP.Nos.10507, 10508, 10509, 12070 & 12071 of 2020

CS/11/09/2020

सत्यमेव जयते

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