IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition Nos.421 & 426 of 2021
and
WMP. Nos.507 & 504 of 2021

M/s.R.K.M.Sand & Aggregates,
Represented by it sProprietor,
Mr.DRavikumar
…Petitioner in W.P. No.421 of 2021

M/s.Elan Engineering & Contractors,
Represented by its Partner,
Mr.B.Maheswari.
…Petitioner in W.P. No.426 of 2021

Vs

1 The Principal Commissioner &
Commissioner of Commercial Taxes
Ezhilagam, Chepauk, Chennai 600 005.
... 1st respondent in both WPs

2. The Assitant Commissioner (ST),
Hosur North (c) Assessment Circle,
Hosur.
... 2nd respondent inW.P. No.421 of 2021

3. The Assitant Commissioner (ST),
Valluvarkottam (c) Assessment Circle,
Chennai.
... 2nd respondent inW.P. No.426 of 2021

4. The Joint Commissioner (ST),
Computer Cell, PAPJM Building,
Greams Road, Chennai - 600 006.
… 3rd Respondent in both WPs

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, to direct the respondents 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 Oil from the supplies in the other States in view of the recent order dated 09.10.2020 passed by the Hon'ble Madras High Court in the case of Munichandrappa & Coin W.P. No.14510 of 2020 and M/s.AVS Tech Building Solution India Private Limited in W.P. No.17248 of 2020.

For Petitioner : Ms.P.Aruna Devi for
Mr.P.Rajkumar in both Wps

For Respondents: Mr.ANR.Jaya Pratap
Government Advocate in both Wps

C O M M O N   O R D E R

Heard Mr.P.Aruna Devi, learned counsel for the petitioners and Mr.ANR.Jaya Pratap, learned Government Advocate for the respondents.

2. Mr.Jaya Pratap, fairly submits that the issue involved in this Writ Petitions are 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, finalorders are passed in these Writ Petitions even at the stage of admission.
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> 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.
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> 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 seemless flow of the

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/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 31.5.2018 stands quashed and set aside along with the consequential Notices and Proceedings initiated against all the Assessees throughout the State of Tamil Nadu.

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

5. As on date, however the order in Writ Appeal is final, and following the rationale thereof, this Writ Petitions are allowed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rkp

To

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

2. The Assitant Commissioner (ST),
Karur -4 (West) Assessment Circle,
Hosur North (C), Assessment Circle, Hosur.
Hosur.

3.The Assitant Commissioner (ST),
Valluvarkottam (c) Assessment Circle,
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Computer Cell, PAPJM Building,
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+1cc to the Special Government Pleader Sr.1406 and 1405

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and
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srg 19/01/2021