IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 04.08.2021

CORAM:

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.6055 of 2004 and
W.P.Nos.17538/2005, 10431/2005, 3014/2005,
31185/2004, 38553/2004, 38554/2004,
38836/2004, 4804/2005 and 6089 of 2004
and W.P.M.P.No.18019 of 2004 and
W.P.M.P.Nos.19050/2005, 3391/2005,
46074/2004, 46401/2004, 5299/2005,
7101/2004 and 7150 of 2004

W.P.6055 of 2004:

Tvl.Kannapuram Enterprises
No.1, 11th Cross Street,
New Colony, Chromepet,
Chennai - 600 044. ... Petitioner

Vs.

The Commercial Tax Officer,(FAC)
Tambaram - I Assessment Circle,
Chennai. ... Respondent

Prayer : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari to call for the records on the file of the respondent herein relating to the petitioner in TNGST 0880584/2003-04 dated 11.2.2004 and quash the same.

W.P. 17538/2005

M/S. R. BALASUBRAMANIAN,
ANNAI AGENCIES, DEALER IN KEROSENE &
CIVIL WORKS CONTRACT, 135-B, VOC NAGAR, KALLAKURICHI …PETITIONER

VS

THE DEPUTY COMMERCIAL TAX
OFFICER, KALLAKURICHI.

PRAYER:

Calling for the records of the case on the file of the respondent herein in TNGST No.4781999/2003-2004 dated 09.05.05 relating to the petitioner made under the Tamilnadu General Sales Tax Act, 1956 and quash the same.

W.P. NO.10431 OF 2005

M/S. HAMILTON OIL (P) LTD.,
16, NAINAR NADAR ROAD, CHENNAI - 600 004. -PETITIONER

VS

THE COMMERCIAL TAX OFFICER,
LUZ ASSESSMENT CIRCLE, 46,
GREENWAYS ROAD, CHENNAI - 28. -RESPONDENT

PRAYER: Calling for the records on the file of the respondent herein in TNGST No. 0802329/2003-2004 dated 31-01-2005 relating to the petitioner made under the Tamilnadu General Sales Tax Act, 1956 and Quash the same.

W.P. NO. 3014/2005

M/S. J.J.AGENCIES,
REP. BY PARTNER V.ST. DURAIPANDI, NO.11/3-4,
THADAGAM ROAD, EDAYARPALAYAM, COIMBATORE. ..PETITIONER

1.THE DEPUTY COMMERCIAL TAX
OFFICER, VELANDIPALAYAM ASSESSMENT CIRCLE, COIMBATORE.

2. THE COMMISSIONER OF COMMERCIAL
TAXES COMMERCIAL TAXES EZHILAGAM, CHEPAUK,
CHENNAI.11 ..RESPONDENTS

PRAYER: To call for the records of the Ist respondent in its TNGST Assessment No.6200943/2002-03, dated 21.12.2004 issued under the Tamil Nadu General Sales Tax Act, 1959 and quash the same in so far as it is against the petitioner.

W.P. NO. 31185/2004

M/S.SRI SAPTHAGIRI AGENCY
BY PARTNERS S.N.SATHIAMURTHI THONDAMANATHAM, PONDY. ..PETITIONER

VS

1.THE DEPUTY COMMERCIAL TAX
OFFICER, TINDIVANAM

2.THE COMMISSIONER OF COMMERCIAL
TAXES, COMMERCIAL TAXES DEPARTMENT, EZHILAGAM CHEPAUK, CHENNAI

3 .THE SECRETARY, COMMERCIAL
TAXES DEPARTMENT, FORT ST. GEORGE, CHENNAI-9

PRAYER;
To issue writ of certiorari calling for the records for the records relating to the petitioner in Na. Ka. A3/3353/03 dt. 03/09/2004 on the file of the first respondet and quash the same.

W.P. NO. 38553/2004

M/S.BALASHRI TRADERSN
D.NO.25, POUND STREET, NAMAKKAL 637 001 . ..PETITIONER

VS

1.THE COMMERCIAL TAX OFFICER
NAMAKKAL TOWN, NAMAKKAL

2. THE COMMISSIONER OF COMMERCIAL
TAXES, COMMERCIAL TAXES, EZHIALAGAM,CHEPAUK CHENNAI

3. THE STATE OF TAMIL NADU REP. BY SECRETARY, COMMERCIAL TAXES
DEPARTMENT, FORT ST. GEORGE, CHENNAI … RESPONDENTS

PRAYER: Calling for the record on the filesof the first respondent relating to the petitioner in the notice issued dated 01/12/2004 in TNGST 3122305/03-04 demanding surcharge, and penalty issued under the Tamil Nadu General Sales Tax Act 1959 and quash the same.

W.P. NO. 38554 OF 2004

M/S. BALASHRI TRADERSN
D.NO.25, POUND STREET, NAMAKKAL 637 001 . ..PETITIONER

VS

1.THE COMMERCIAL TAX OFFICER
NAMAKKAL TOWN, NAMAKKAL

2. THE COMMISSIONER OF COMMERCIAL
TAXES, COMMERCIAL TAXES, EZHIALAGAM,CHEPAUK CHENNAI

3. THE STATE OF TAMIL NADU REP. BY SECRETARY, COMMERCIAL TAXES
DEPARTMENT, FORT ST. GEORGE, CHENNAI … RESPONDENTS

PRAYER : Calling for the records relating to the clarification of the second respondent dated 01-10-2003 issued in L.No.K.Dis.Acts Cell-I/47148/2002 and quash the same.

W.P. NO. 38836/2004

M/S.SOUTHERN PETRO OILS(P)LTD
168,PURASAWALKAM HIGH ROAD CHENNAI-10.

Vs

1.THE COMMERCIAL TAX OFFICER
AYANAVARAM ASSESSMENT CIRCLE KURALAGAM ANNEXE CHENNAI-108.

2. THE COMMISSIONER OF COMMERCIAL
TAXES,EZHIALAGAM,CHEPAUK CHENNAI.

PRAYER:
To issue a writ of Certiorari or any other order in the nature of Writ, to call for the records of the Respondent in its TNGST1000891/2002-03 dt. 25-10-04 and quash the same in so far as it is against the petitioner. AMENDED AS to issue a writ of Certiorari or any other order in the nature of Writ, to call for the records of the Respondent in its TNGST1000891/2002-03 dt. 24-12-04. (PRAYER AMENDED VIDE ORDER DT 08/12/2005 MADE IN WPMP.7938/2005 IN WP.38836/2004 BY AKJ)

W.P. NO. 4804/2005

M. JALALUDEEN,
TVL. JALAL OIL STORE, 23 & 24, CHINNAKADAI STREET, ILUPPUR,
LEEPURAM POST, PUDUKKOTTAI - 622 102.

THE COMMERCIAL TAX OFFICER,
PUDUKKOTTAI I (FAC) ASSESSMENT CIRCLE,
PUDUKOTTAI - 622 102 ...PETITIONER

R-2 THE STATE OF TAMILNADU,
REP. BY SECRETARY, COMMERCIAL TAXES DEPT.,
FORT ST. GEORGE, CHENNAI - 9. ...RESPONDENT

PRAYER:
To call for the records of the respondent in its TNGST Asst. No. 4100339/2002-03 dated 07-06-2004 issued under the Tamil Nadu General Sales Tax Act, 1959 and quash the same in so far as it is against the petitioner.

W.P.NO.6089/2004

TVL.VASAN ENTERPRISES
AMBUR 635 802. PETITIONER

VS

THE COMMERCIAL TAX OFFICER
(FAC), TAMBARAM-1 ASSESSMENT CIRCLE, CHENNAI.. ..RESPONDENT

PRAYER: Call for the records on the file of the respondent herein relating to the petitioner in TNGST 0881081/2003-2004 dated 11-02-2004 and quash the same.

For Petitioner in all WPs.	:	Mrs.Lakshmi Sriram For M/s.R.V.Chitra Associates
For 1st Respondent in all WPs.	:	Mr.V.Nanmaran Government Advocate

COMMON ORDER

The issues raised in all these writ petitions were adjudicated elaborately by the Hon'ble Division Bench of this Court in the case of SGS Petro Organic Limited Vs. Commercial Tax Officer, Ayanavaram Assessment Circle, Chennai and others reported in 2013 SCC Online Mad 721.

2. It is brought to the notice of this Court that the S.L.P. filed against the said judgment of the Hon'ble Division Bench was also dismissed by the Hon'ble Apex Court of India. Thus, the order passed by the Hon'ble Division Bench is to be followed for the purpose of disposing of these writ petitions. The relevant paragraphs of the judgment of the Hon'ble Division Bench reads as under:

> "18. The Committee, while making its recommendations, has opined as follows:-
>
> "3. The Committee find that there is a big difference between the selling price of SKO and HSD (High Speed Diesel) ranging from Rs.3.76 to Rs.7.26 per litre. This wide difference is the basis cause of misuse of SKO. The Committee are of the opinion that this difference should be bridged. Apart from raising customs duty the Committee recommend that the State Governments should impose sales tax to such an extent that the difference between rolling price of SKO and HSD is marginal. . .
>
> 4. Government through a notification have made it mandatory for the public sector oil companies to colour the kerosene blue meant for Public Distribution System (PDS). Imported kerosene is of white colour and can easily be mixed with diesel and even with petrol. The Committee are of the opinion that the

Government should make it mandatory to colour the imported kerosene also with a colour different from blue which is meant for PDS. "

19. The report consists of certain annexures. Annexure-1I of the Report gives the details of the cases registered for misuse of PDS kerosene & Superior Kerosene Oil in automobiles as fuel. As per the said Annexure, about 15,065 litres of both PDS kerosene and SKO worth about Rs.2,44,023/- and about 26 tanker lorries were seized in 2002, about 22,437 litres worth about Rs.3,68,866 were seized in 2003 and upto 5.7.2003, 62 cases were registered and about 37,502 litres worth about 6,12,889/- along with 64 vehicles were seized.

20. The aforesaid details make it crystal clear that the misuse of PDS kerosene & Superior Kerosene Oil in automobiles as fuel have been increasing from year to year. In 2002 only 24 cases were registered, whereas in 2003 it increased to 62 and in 2003 upto 5.7.2003, it gone to 64. This would only infer that the persons engaged in misuse of SKO and the kerosene meant for PDS are being increased from time to time .

21. The aforesaid aspect has been highlighted in the Budget Speech made on the Floor of the year 2003-2004. Coming to know about the use of white Kerosene as a substitute for Diesel Oil, besides causing more pollution and damage to the engines, in order to curb the said practice, it has been decided by the Government to increase the tax rate for white Kerosene from 4% to 25%. But, the tax rate for PDS Kerosene i.e. Blue Kerosene will however continue to remain at 4%.

22. The object of providing such concessional rate of duty on kerosene used for illuminating burning oil lamps i.e., @ 4% was to provide some relief to those economically backward sections of society who use kerosene for illumination and other domestic purposes, and therefore, the benefit of concessional rate of duty was available only on the kerosene meant for PDS. On such consideration only the kerosene which meant for Public Distribution System was continue to remain taxed at 4%, whereas only the white Kerosene which is meant for industrial purpose is taxed at 25%. It is brought to the notice of this Court that in a study undertaken by the Southern Region of the Anti-Adulteration Cell it was observed that "unimaginable quantities of white kerosene are being imported for

consumption by industrial consumers and by the general public. It was also found that the State Government suffers a heavy loss of revenue on account of sales tax evasion as the sales tax on diesel is around 28 per cent as against 13.8 per cent on SKO. Considering all these factors along with the laudable recommendations made by the Standing Committee and the follow up steps taken by the State Government to curb the misuse of kerosene meant for Public Distribution System, we do not any see any illegality in imposing tax on white kerosene meant for industrial purpose at 25%.

23. With regard to the writ appeals filed challenging the individual order of assessment, we are in full agreement with the learned single Judge in rejecting those matters as they have been tied along with this batch only for considering the legal issue involved and not the factual aspects raised challenging the assessment order.

For the reasons stated above, the writ appeals fail and the same are dismissed. Consequently, the connected miscellaneous petitions are closed. No costs."

3. As far as the writ petitions filed against the notice are concerned, the respective Assessees are at liberty to submit their objections/ explanations and participate in the process of proceedings to be completed. Regarding the Assessment Orders passed, the respective Assessees are at liberty to prefer an appeal, if any other grievance exist, except the issues which were concluded in the judgment of the Hon'ble Division Bench of this Court cited supra.

4. With these observations, all these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Commercial Tax Officer,
   Tambaram - I Assessment Circle,
   Chennai.

2. The Deputy Commercial Tax Officer,
   Kallakurichi.

3. The Commercial Tax Officer,
   LUZ Assessment Circle, 46,
   Greenways road, Chennai – 28.

4. The Deputy Commercial Tax
   Officer, Velandipalayam Assessment Circle,
   Coimbatore.

5. The Commissioner of Commercial
   Taxes Commercial Taxes Ezhilagam, Chepauk,
   Chennai.11

6. The Deputy Commercial Tax Officer,
   Tindivanam.

7. The Secretary, Commercial
   Taxes Department, Fort St. George, Chennai-9

8. The Commercial Tax Officer,
   Namakkal Town, Namakkal.

9. The Commercial Tax Officer
   Ayanavaram Assessment Circle Kuralagam Annexe
   Chennai-108.

10. The Commercial Tax Officer,
    Pudukkottai I (FAC) Assessment Circle,
    Pudukottai - 622 102

+9 ccs to M/S. Lakshni Sriram Advocate, SR No.38762
+8 ccs to Special Government Pleader (Taxes)
SR Nos.38588,38589,38590 to 38592, 38594 to 38596

W.P.No.6055 of 2004
etc. Batch

AJS(CO)
PM(27/08/2021)