IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 04.08.2021

CORAM:

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

W.P.No.9686 of 2004
and
W.P.M.P.No.11336 of 2004

1. Sri Lakshmi Enterprises,
   rep. by its Proprietor
   P.Thiyagarajan,
   140-Q, N.Kosavampatti
   Namakkal-2.

2. Palaniappa Enterprises,
   Rep. by its Proprietor,
   M.Palaniappa
   140, N.Kosavampatti
   Namakkal Taluk, Namakkal District.

3. Sri Balaji Oils rep. by
   its Proprietor P.Sasikumar
   Main Road Sangari,
   Namakkal.

4. Sathya Agencies,
   rep. by its Proprietor,
   P.Selvaraj, Main Road Paramathivelur,
   Namakkal.

5. Sri Jothi Petro Products
   rep. by its Managing Partner
   A.M.G.Vijayakumar
   19, Lakshmipuram,
   2nd St., Trichy 10.

... Petitioners

Vs.

1. The Special Commissioner,
   Commissioner of Commercial Taxes,
   Chepauk, Chennai - 5.

2. Commercial Tax Officer,
   Namakkal Rural, Namakkal.

3. Deputy Commercial Tax Officer,
   Tiruverumbur Circle,
   Tirchy.

... Respondents

Prayer : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus forbearing the first respondent and the second respondent from levying and collection of 1% resale tax under Section 3-H of the Tamil Nadu Government Sales Tax on the total turnover of the petitioners.

For Petitioners : Mr.P.Solomon Francis

For Respondents 1 to 3 : Mr.V.Nanmaran
Government Advocate

ORDER

The issue raised in this writ petition was 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 this writ petition. 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 petition filed against the notice is concerned, the Assessees are at liberty to submit their objections/explanations and participate in the process of proceedings to be completed. Regarding the Assessment Order passed, the 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, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy//

Sub Assistant Registrar

Sgl

To

1. The Special Commissioner,
   Commissioner of Commercial Taxes,
   Chepauk, Chennai - 5.

2. Commercial Tax Officer,
   Namakkal Rural, Namakkal.

3. Deputy Commercial Tax Officer,
   Tiruverumbur Circle,
   Tirchy.

W.P.No.9686 of 2004

PMK(CO)
SU(23/08/2021)