IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.Nos.8549 & 21028 of 2012
and
W.M.P.Nos.1 & 1 of 2012

Chennai Petroleum Corporation Ltd,
Represented by its Deputy General Manager,
(Finance), S.Ramakrishnan, Manali,
Chennai - 600 068. ... Petitioner in both W.Ps.

Vs.

The Deputy Commissioner (CT)-III,
Large Taxpayers Unit,
34 (Old No.1230, ''Dugar Towers''
5th Floor, Marshall Road, Egmore,
Chennai - 600 008. ... Respondent in both W.Ps.

PRAYER in W.P.No.8549 of 2012:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records on the files of the Respondent herein in TIN/33491560843/2007-08 dated 16.03.2012 to quash the same, in so far as it relates to levy of higher rate of tax of 25% on a turnover of Rs.177,52,53,719/- ignoring Notification G.O.Ms.No.79, Commercial Taxes and Registration (B2) Department, dated 23.03.2007 while directing the respondent to re-examine the issue after considering the said notification.

PRAYER in W.P.No.21028 of 2012:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records on the files of the Respondent herein in TIN/33491560843/2008-09 dated 30.06.2012 to quash the same, in so far as it relates to levy of higher rate of tax of 25% on the turnover of Rs.200,93,52,857/- GO Ms.No.79 Commercial Taxes and Registration (B2) Department, dated 23.03.2007, Gazetted in Notification No.II(1)/CT&RE/30(a-6)/2007 dated 23.03.2007 and the assessment at 12.5% instead of 4% on a turnover of Rs.42,54,08,977/-.

For Petitioner (in both W.Ps)	:	Mr.N.Prasad
For Respondent (in both W.Ps)	:	Mr.Mohamed Shaffiq Special Government Pleader

O R D E R

By this common order, both these writ petitions have been disposed.

2.In W.P.No.8549 of 2012, the petitioner has challenged the impugned order dated 16.03.2012 for the Assessment year 2007-2008 in so far as tax demanded on Superior Kerosene Oil. It is the contention of the petitioner that though the impugned order deals with other issues, the challenged to the impugned order is confined only to the tax demanded on the Superior Kerosene Oil.

3.In W.P.No.21028 of 2012, the petitioner has confined the challenge to the impugned order dated 30.06.2012 regarding tax demanded on sale of Superior Kerosene Oil (SKO) and to Sale of Crub Rubber Modified Bitumen.

4.The learned counsel for the petitioner submits that other aspects are not challenged and therefore the order passed by the respondent on the other issues may be taken have been attained finality. The challenge is confined to the tax on Superior Kerosene Oil and sale of LAB Feed Stock (N.Paraffin). It is the contention of the petitioner that the petitioner has three different categories of products which to its buyers which are as follows:

> a.sale of Superior Kerosene Oil effected to oil marketing companies for public distribution system.
>
> b.sale to industrial users are exempted under Notification No.11(1)/CTR/30 (a-6)/2007 dated 23.03.2007 as notified by G.O.Ms.No.79 dated 23.03.2007.
>
> c.sale of LAB Feedstock (N.Paraffin) extracted from the superior kerosene oil sent to Tamilnadu Petro Products Limited.

5.It is the consideration paid for the aforesaid activity by retaining the Lab Feed Stock (N.Paraffin) which is the subject matter of the tax. It is submitted that the Tribunal i.e., Taxation Special Tribunal had decided the issue in favour of the petitioner by its order dated 06.10.2003 in O.P.Nos.355 of 2003 and 579 of 2002.

6.It is submitted that the issue as to whether the LAB Feed Stock (N.Paraffin) was mineral oil or whether it was a Superior Kerosene Oil need not be decided. At the same time, that the sale was covered under Section 3(3) of the TNGST 1959 at 3% against Form XVII. Thus, it is the contention of the petitioner that the product which was sold by the petitioner was liable to be classified tax as a Mineral Oil under Entry 67(a) Part b of the first schedule to the TNVAT Act, 2006, attracting tax at 4%

as Mineral Oil excluding Crude Oil and therefore was liable to tax at 4% during the period in dispute.

7.On the other hand, the department has held that the petitioner was liable to pay tax at 25% under Entry 9 to 2nd Schedule. It is submitted that even if it is held that the petitioner was selling the Superior Kerosene Oil to the said company. The petitioner would be entitled to exemption under Notification filed G.O.Ms.No.79 dated 23.03.2007 which has not been considered by the respondent.

8.Asfaras the other additional issue arising on W.P.No.21028 of 2018 is concerned. The demand is on Bitumen. According to the petitioner, Crub Rubber Modified Bitumen sold by the petitioner is liable to tax under Entry 8, part b to the 1st schedule and not as a residual items under Entry 69 part C to 1st schedule at 4% has been held by the respondent in the impugned order.

9.The learned counsel for the petitioner submits that the issue is covered by the decision of the Hon'ble Supreme Court Osnar Chemical Pvt. Ltd Vs. Commissioner of Central Excise, Bangalore – II and the decision in Bharat Petroleum Corporation Ltd Vs. Deputy Commissioner (CT-I) LTU and another rendered by this Court in W.P.No.18156/12 dated 09.12.2019

10.Defending the impugned order, the learned counsel for the respondent submits it is open to the petitioner to file a statutory appeal prescribed under the provisions of the TNVAT Act, 2006 and therefore prays for a dismissal of this writ petition.

11.It is further submitted that the petitioner has confused the Assessing Officer by taking a different stand before the Assessing Officer initially the petitioner had claimed the sale of goods as Superior Kerosene Oil as an industrial dispute to Tamilnadu Petro Chemical Limited But had paid tax at 4% and had filed returns in the Form J instead of Form I and thereafter the petitioner took different stand that the product in question was a LAB Feeding Stock (N.Paraffin) which was in-consistent with the Form I. Therefore, the respondent is justified in demanding tax on sale of Superior Kerosene Oil which was report in Form J monthly return. Accordingly, it is therefore submitted that the respondents are justified confirming the demand on sale of Superior Kerosene Oil under Entry 9 to 2nd schedule to the TNVAT Act, 2006.

12.I have considered the arguments advanced by the learned counsel for the petitioner and the respondent and also considered the objections raised by Mr.Shaffiq, learned Special Government Pleader.

13.The alternative view of the petitioner, that the petitioner was entitled the exemption as notified as G.O.Ms.No.79 dated 23.03.2007 has not been considered by the respondent while passing the impugned orders. To that extent, the impugned order is liable to be quashed, both the cases are liable to be remitted back to the respondent for considering whether the petitioner was entitled to the concession under the above said notification. Since the matter is also remitted back to the respondent, the issue as to whether the product in question is to be treated as sale of Superior Kerosene Oil to the above exemption or whether the petitioner had indeed sold LAB Feeding Stock (N.Paraffin) was a mineral liable to tax under Entry 67(a) to the 1st schedule may also be examined by the respondent. Considering the nature of transactions between the petitioner and the said Tamilnadu Petro Products Limited. Asfaras the other issue in W.P.No.21028 of 2012 is concerned, the respondent may independently examine the applicability of the decision of the Hon'ble Supreme Court in Osnar Chemical Pvt. Ltd Vs. Commissioner of Central Excise, Bangalore - II 2012 (276) E.L.T. 162 (SC).

14.In the result, the writ petitions challenging the impugned order to the extent of demand on Superior Kerosene Oil sold to Tamilnadu Petro Productus limited is set aside and remitted back to the respondent for passing a fresh order. Similarly, the issue relating to levy of tax on Crub Rubber Modified Bitumen for the Assessment Year 2007-08 in W.P.No.21028 of 2012 also stand remitted back for fresh determination in the terms of the above two decisions. The petitioner is given liberty to file a additional written submission on these two aspects before the respondent within a period of 30 days from the date of receipt of a copy of this order.

15.The respondent shall pass a final order on this two aspects within a period of three months from the date of receipt of a copy of this order. Before passing such order, the petitioner shall also be heard in person physically or through Video Conferencing.

16.These writ petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commissioner (CT)-III,
Large Taxpayers Unit,
34 (Old No.1230, ''Dugar Towers''
5th Floor, Marshall Road, Egmore,
Chennai - 600 008.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No. 15659
+1cc to the Special Government Pleader (Taxes), S.R.No. 16135

W.P.Nos.8549 & 21028 of 2012
and
W.M.P.Nos.1 & 1 of 2012

AK(CO)
GN(04/06/2021)