IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16/3/2021
C O R A M

THE HONOURABLE Mr.JUSTICE B.PUGALENDHI

Writ Petition No.14682 of 2020

Birla Carbon India Private Limited
(Formerly known as SKI Carbon Black
(India) Private Limited
K 16 Phase II
SIPCOT Industrial Complex
P.O Gummidipoondi District
Tiruvallur 601 201. ... Petitioner

Vs

The Chief Electrical Inspector
to the Government
Thiru-vi-ka Industrial Estate
Guindy
Chennai 600 032. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the respondent in Letter No.12083/A3/2019-3 dated 30/6/2020 demanding tax for the period June 2016 to March 2019 and set aside the same as being without jurisdiction and ultra vires the provisions of the Tamil Nadu tax on Consumption or Sale of Electricity Act, 2003.

For petitioner ... Mr.Rahul Balaji

For respondents ... Mr.Kumaresh Babu
AAG - XII
assisted by Mr.E.Balamurugan
Special Government Pleader

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O R D E R

This writ petition is filed against the Letter No.12083/A3/2019-3, dated 30/6/2020, in and by which the respondent has demanded tax, as per Section 9 (1) of the Tamil Nadu tax on Consumption or Sale of Electricity Act, 2003, for the period June 2016 to March 2019.

2. The case of the petitioner is that as per the dictum laid down by the Hon'ble Supreme Court in State of Andhrapradesh Vs. National Thermal Power Corporation Limited & Ors, (2002) 5 SCC - 203, the respondent cannot demand tax on interstate sale of electricity.

3. Mr.Kumaresh Babu, learned AAG - XIII, appearing for the respondent would submit that any transaction that take place through Indian Energy Exchange, cannot be an interstate sale and the petitioner has to satisfy the ingredients of interstate sale, as observed by the Hon'ble Supreme Court in (2002) 5 SCC - 203 and also to satisfy the provision of Section 7 of the Integrated Goods and Services Act, 2017, from the date of its promulgation. He would further submit that whatever electricity generated by the provisions has been sold through IEX and therefore, it would be only an interstate sale and hence it is not liable for tax. However, the learned counsel for the respondent submits that they are ready to provide an opportunity to the petitioner to produce the relevant materials to substantiate his case that they are not liable to be taxed.

4. This Court, paid its anxious consideration to the rival submissions made. The impugned order has been issued only as a show cause and the petitioner has also replied to the show cause with certain materials.

5. Learned Additional Advocate General appearing for the respondent also submits that it is open to the respondent to establish and to satisfy with the ingredients of interstate sale as observed by the Hon'ble Supreme Court in (2002) 5 SCC - 203 is not applicable to the petitioner and if the petitioner satisfy the provisions, under Section 7 of the Integrated Goods and Services Act, 2017, then they would consider and pass orders suitably.

6. In view of the specific stand taken by the learned counsel for the petitioner and the respondent, this writ petition is disposed of, with a direction to the petitioner to reply to the show cause, enclosing all the documents relied on by him to establish that he is not liable to be taxed, as per the dictum laid down by the Hon'ble Supreme Court, within a period of three weeks, from the date of receipt of a copy of this order. As and when such a reply has been sent by the petitioner, the respondent shall consider the same and pass suitable orders thereupon by ascertaining the ingredients of interstate sale as observed by the Hon'ble Supreme Court in STATE OF ANDHRA PRADESH Vs. NATIONAL THERMAL POWER CORPORATION

LIMITED & ORS (2002) 5 SCC - 203, within a period of six weeks thereafter. Till such time, the respondents shall not take any coercive steps. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS III)

/TRUE COPY/

Sub-Assistant Registrar

mvs
To
The Chief Electrical Inspector
to the Government
Thiru-vi-ka Industrial Estate
Guindy
Chennai 600 032.

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PMK(CO)
KKN 20.04.2021