BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.2723 of 2021

and

W.M.P.(MD)No.2245 of 2021

M/s.Vedha Spinning Mills Pvt Ltd.,
Represented by its Director C.Kandaswamy,
2612/2, Vedasandur Road,
Thadikombu, Dindi ... Petitioner

-Vs-

1.The State Tax Officer,
Vedasandur Assessment Circle,
Commercial Taxes Building,
Dindigul.

2.The Commissioner of State Taxes,
Ezhilagam,
Chepauk,Chennai. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the first respondent to issue C forms under the Central Sales Tax Act, 1956 read with Central Sales Tax (Registration and Turnover) Rules, 1957 to the petitioners for the purchase of High Speed Diesel from the suppliers in other States in view of the Judgment dated 05.01.2021 passed by the Hon'ble Madras High Court Madurai Bench in the case of M/s.Kartya Constructions Private Limited in W.P.(MD)No.19800 of 2020 for running the machinery.

For Petitioner : Mr.N.Sudalaimuthu
for Mr.S.Karunakar

For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2.The prayer made by the petitioner is opposed by the learned Special Government Pleader by placing reliance on the circular dated 05.09.2019 issued by the Additional Chief Secretary/Commissioner of Commerical Tax, Chennai.

3.I am of the view that reliance on the said circular is misplaced in view of the subsequent judicial pronouncement. As late as October 2020, a learned Judge of this Court considered the identical prayer in W.P.No.14510 of 2020. It cannot be in dispute that the case on hand is covered by the decision reported in ***2020 (3) TMI 450 (The Commissioner of Commercial Taxes, Chennai, The Additional Commissioner (CT) Vs. The Ramco Cements Ltd., and the State Tax Officer, The Joint Commissioner (CS) (Systems).*** The Hon'ble Division Bench held as follows:

> "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 good. 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.
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> 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 view 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.
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> 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 31.05.2018 stands quashed and set aside along with the consequential notices and proceedings initiated against all the assessees throughout the State of Tamil Nadu."

4.Questioning the order passed by the Hon'ble Division Bench, the Department filed Special Leave to Appeal (C) Nos.15785-15788 of 2020 before the Hon'ble Supreme Court. Vide order dated 24.03.2020, the Special Leave Appeals were dismissed. The Hon'ble Supreme Court ordered as follows:-

> "Heard the learned counsel for the parties at length.
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> We are in agreement with the view taken by the Punjab and Haryana High Court in Carpo Power Limited Vs. State of Haryana & Ors., which has already been upheld by this Court by dismissing Special Leave Petition (C) No.20572 of 2018 vide order dated 13th August 2018.
>
> The High Court of Jharkhand at Ranchi has also dealt with

the same issue in 'Tata Steel Limited Vs. State of Jharkhand' reported in 2019 SCC online Jharkhand 1255. This Judgment, in our opinion, is exhaustive and answers all the points urged before us by the petitioner in the instant special leave petitions.

It is brought to our notice that nine High Courts have taken the same view. Even the decision of the High Court of Rajasthan has been affirmed by this Court by dismissal of Special Leave Petition (C) No.27529 of 2019 and connected cases vide order dated 3rd February 2020.

Considering the consistent view of nine High Courts, including dismissal of special leave petition by different Bench of this Court, and being satisfied about the exposition on the matters in issue by the High Court of Madras vide impugned Judgment and order being a possible view, we decline to interfere in these special leave petitions.

Notably, after the decision of Punjab and Haryana High Court even the Union of India has chosen to act upon the said decision by issuing Office Memorandum dated 1st November 2018 and directing all the States/Union Territories to follow the view taken by the Punjab and Haryana High Court.

Hence, we see no reason to reopen the entire matter. The Special Leave Petitions are accordingly dismissed."

5.Therefore, this writ petition has to be necessarily allowed. It is accordingly allowed. The petitioner is entitled to the inclusion of 'High Speed Diesel Oil' as a commodity in the registration certificate. Let this exercise be carried out within a period of four (4) weeks from the date of uploading of this order. The request of the petitioner for issuance of 'C' Forms is allowed as a consequence thereof. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The State Tax Officer,
Vedasandur Assessment Circle,
Commercial Taxes Building,
Dindigul.

2.The Commissioner of State Taxes,
Ezhilagam,
Chepauk, Chennai.

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