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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.9496, 9499, 9502, 9505, 9507,
9512, 9516, 9526 & 9528 of 2022 and
W.M.P.Nos.9250, 9251, 9254, 9255,
9257, 9258, 9260, 9261, 9263, 9264,
9265, 9266, 9267, 9268, 9270,
9271, 9273 & 9275 of 2022

SHV Energy Private Limited,
Represented by Mr.Devdutta Masanta,
Senior Manager Finance,
No.150 and 151, North Usman Road,
T.Nagar, Chennai - 600 017.

... Petitioner in all WPs

Vs

1. The Deputy Commissioner (ST) - I,
   Large Taxpayers Unit,
   Integrated Buildings, Commercial Taxes and
   Registration Department, South Tower
   4th Floor, Block No.19, Government Farm Village,
   Guindy Taluk, Nandanam, Chennai - 600 035.

2. SHV LPG India Private Limited
   (Now Known as Casagrand Magnum Private Limited)
   NPL Devi, No.111, L.B. Road,
   Thiruvanmiyur,
   Chennai - 600 041.

... Respondents in all WPs

Prayer : Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records on the file of the first respondent herein in TIN/33551522107/2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 dated 24.03.2022 and quash the same.

In all WPs
For Petitioner : Mr.N.Sriprakash
For Respondents : Mr.C.Harsha Raj
Additional Govt. Pleader (for R1)

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COMMON ORDER

The second respondent was the original dealer under the erstwhile Tamil Nadu Value Added Tax Act, 2016 (in short 'TNVAT Act') subsequently, that has been transferred to the petitioner. Therefore, the liabilities also including the tax liability if any under any tax Statute, have also been transferred to the petitioner dealer.

2. In this regard, it is to be noted that, for the assessment years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16, totally eight years, assessment has been made under the provisions of the TNVAT Act, though it was concluded, subsequently it was re-assessed on the ground that, the gas cylinder being supplied or sold by the erstwhile second respondent dealer and the present petitioner for the relevant years to their franchise are to be charged 14.5% tax under the Act instead of 5% alone, because, according to the Revenue, the petitioner or the second respondent as he then was, had not substantiated by filing documents to the Revenue that, those 12 Kg cylinders meant for domestic use had been supplied only for domestic use and not for commercial use.

3. In this controversy, the earlier assessment orders passed were under challenge before this Court in a number of writ petitions in W.P.Nos.14006 to 14013 of 2016, where, a learned Judge of this Court passed an order in those writ petitions by setting aside the assessment orders by remitting back the matter to the Appellate Authority for reconsideration.

4. After such reconsideration, now the present assessment orders for each of the years dated 24.03.2022 have been passed, challenging the same, the present set of writ petitions have been filed.

5. Mr.N.Sriprakash, learned counsel appearing for the petitioner dealer though made submissions that, it was the controversy as to whether the 12 Kg domestic cylinders have been supplied by the petitioner directly to the consumer or through their franchise, that was the pre-revised notice, subsequently now through the impugned orders the Revenue traversed beyond which and they presumed that, neither the second respondent at that time nor the petitioner now have filed the documents to substantiate their contention that, what are all the documents relates to selling for domestic use and what are all the documents for commercial use, based on which, the rate of tax at 5% or 14.5% can be decided. In this context, even though the learned counsel appearing for the petitioner was making attempt to take this Court to various documents filed to substantiate

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their contention and further made attempt to state that, those documents though have been filed have not been properly considered by the Revenue, therefore, on that ground, these impugned orders are liable to be set aside, this Court is not impressed with the said submissions made by the learned counsel appearing for the petitioner dealer, because, those minute factual details as to whether those documents filed by the petitioner dealer had been properly considered or not or they have considered in proper perspective or not, are the matters to be gone into only by the Appellate Authority and not by this Court.

6. Therefore, after hearing Mr.C.Harsha Raj, learned Additional Government Pleader appearing for the respondent Revenue, this Court is of the opinion that, the petitioner can be relegated to go before the Appellate Authority to assail these impugned orders.

7. In this context, it was brought to the notice of this Court by the learned counsel appearing for the petitioner by making a statement that, already at the time of first round of litigation, 25% of the demand in each of the case had been deposited, therefore, presently when this petitioner go before the Appellate Authority, the pre-deposit condition of 25% cannot be imposed, therefore, a direction may be given to that aspect.

8. With regard to this plea made by the learned counsel for the petitioner side, the learned Additional Government Pleader appearing for the respondents, on getting instant instruction from the Officer, who present before this Court submits that, as to the plea whether 25% of the demand have already been paid or not, after verification, it is found that, the 25% of the demand paid by the petitioner have already been given credit in the very impugned order as that is reflected in the impugned order itself.

9. I have considered the said submissions made by both sides and in view of the above, this Court is inclined to dispose of these writ petitions with the following orders:

(i) That the impugned orders herein cannot be assailed before this Court invoking the extraordinary jurisdiction under Article 226 as those factual matrix can be gone into only by the Appellate Authority. Therefore, the petitioner is to go before the Appellate Authority challenging these impugned orders. At the time of filing the appeal since the 25% of the demand already been paid, the Appellate Authority shall entertain those appeals without insisting upon the pre-deposit of 25% once again at this juncture.

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(ii) However, it is made clear that, once the appeal is entertained, if any interim order by way of stay or injunction is sought for by the petitioner against the impugned orders of assessment, it is open to the Appellate Authority to impose such condition of not more than 25% of the demand as a condition precedent for considering the grant of interim orders if any sought for. The petitioner is given 30 days time to prefer such appeals as indicated above. Till the petitioner files an appeal within the 30 days time strictly as indicated herein above, no further persuasive or coercive action to recover the amount pursuant to the impugned orders shall be made. However, this concession will be applicable only for the 30 days period, beyond which, if the petitioner has not moved the appeal, it is open to the Revenue to proceed in accordance with law.

10. 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

The Deputy Commissioner (ST) - I,
Large Taxpayers Unit,
Integrated Buildings, Commercial Taxes and
Registration Department, South Tower
4th Floor, Block No.19, Government Farm Village,
Guindy Taluk, Nandanam, Chennai – 600 035.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.26432
+1cc to the Special Government Pleader(Taxes), S.R.No.26981

W.P.Nos.9496 of 2022 etc. batch

NR[co]
NSK/20/05/2022

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