IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.12942 of 2023
and
W.M.P.No.12728 of 2023

M/s.Premier Tex Products Private Limited
Rep. By its Director,
Mrs.R.Rajapapathi
1230, Srivilliputtur Road,
Achanthavirthan, Srivilliputtur Taluk,
Virudhunagar – 626 137. .. Petitioner

vs

1.The Principal Commissioner & Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai – 600 005.

2.The Deputy Commercial Tax Officer / State Tax Officer,
Srivilliputtur Assessment Circle,
Sales Tax Office, Srivilliputtur. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue writ of mandamus directing the first and second respondents to issue "C forms (to permit downloading of C Form from the CT Department Portal) under the Central Sales Tax, 1956 read with the Central Sales Tax (Registration and Turnover) Rules, 1957 to the petitioner for the inter- State purchase of High Speed

Diesel Oil made by the petitioner as requested by the petitioner in their letter dated 10.08.2021 and the reminder letter dated 23.11.2022.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.C.Harsha Raj
Additional Government Pleader

ORDER

Heard P.Rajkumar, learned counsel for the petitioner and Mr.C.Harsha Raj, learned Additional Government Pleader for the respondents.

2. Mr.C.Harsha Raj, fairly submits that the issue involved in this writ petition is squarely covered by a decision of this Court in W.P.Nos.4173 and 4176 in the case of *M/s. Dhandapani Cement Private Limited Vs. The State of Tamil Nadu,* wherein the identical issue as arising before me has been considered and decided by me in the following terms:

> *'Mr.V.Haribabu, learned Additional Government Pleader (Taxes)takes notice for the respondents. By consent of both sides, final orders are passed in these Writ Petitions even at the stage of admission.*
> *2. The petitioners in the Writ Petitions have expressed their difficulty in obtaining 'C' forms under the provisions of the Central Sales Tax Act, 1956 in order to avail concessional benefit of tax for purchase of High Speed Diesel from suppliers in other States.*

3. At the outset, Mr.P.Rajkumar, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader for the revenue agree that the issue in regard to entitlement to 'C' Forms for purchase of High Speed Diesel from supplies outside Tamil Nadu, to enable the dealers to seek a concessional rate of tax, is covered in favour of the assessee by a decision of this Court in M/s Ramco Cements Ltd. V. The Commissioner of Commercial Taxes (W.P.Nos.19460 of 2018) dated 26.10.2018 in a batch of over fifty (50) Writ Petitions.

4. A learned Single Judge of this Court in considering the issue held categorically that the benefit of the concessional rate is available to dealers who purchase High Speed Diesel from neighbouring States by way of inter-state sales. Reference is made to the decisions of Writ Petition Nos.421 & 426 of 2021 other Courts that have considered an identical issue, holding the same in favour of the assessee. In fact, the decision of the Punjab and Haryana High Court has been carried to the Supreme Court in special leave and has been confirmed in State Of Haryana & Others Vs. Caparo Power Ltd. & Others in Special Leave Petition (Civil No. 20572 of 2018). The issue has also been considered in Hindustan Zinc Limited & Several Others Vs. The State of Rajasthan & others (S.B.Civil Writ Petition No.5506/2018 dated 18.05.2018) and Shree Raipur Cement Plant (A unit of Shree Cement Limited) Vs. State of Chhattisgarh, Finance department (Tax Division) (W.P.(T) No.83 of 2018 dated 18.05.2018) and held in favour of the assessee.

5. Mr.Haribabu does not dispute the above position. However, he maintains that the State proposes to challenge the order of the learned Single Judge in the case of M/s. Ramco Cements Ltd (supra) though no such appeal has been filed thus far.

6. In such circumstances, till such time the *order of this court in the case of M/s Ramco Cements Ltd (supra) is either stayed or reversed it is incumbent upon all Assessing Authorities within the State of Tamil Nadu to apply the rationale of the decision to all pending assessments. The Petitioner in these Writ Petitions has stated on affidavit that it is unable to download the 'C' forms from the websites as the same stand blocked from use. Upon enquiry with the Assessing Authorities, they have been informed that the benefit of the decision in M/s Ramco Cements Ltd can be extended only to those dealers that are party to the decision. This stand is unacceptable in so far as the decision of this Court as well as other High Courts, one of which has been confirmed by the Supreme Court, are decisions in rem, applicable to all dealers that seek benefit thereunder, of course, in accordance with law.*

7. For the above reasons, these Writ Petitions are allowed. Consequently, necessary action to be taken by the department, forthwith. No costs. Connected Miscellaneous petitions are closed.'

3. The State has, after the date of the above order, filed a Writ Appeal in W.A.No.3403 of 2019 challenging the decision in the case of *Ramco Cements* (Supra) that has been considered and dismissed by a Division Bench of this Court on 09.03.2020 in the following terms:

"..........

13. It is true that the liability to pay tax arises under the provisions of the CST Act only upon seller who effects the taxable sale in the course of inter-State Trade or Commerce and only such Dealers can initially obtain the registration under Section 7(1) of the Act, but, the liability *to pay tax on purchase of goods is an independent liability of Purchasing Dealer also to pay tax. Section 7(1) only casts an obligation on the Seller liable to pay tax as per Section 6 and to obtain registration. It does not talk of registration or cancellation there of Judgt. dt 9.3.2020 in W.A.Nos.3403/2019, etc. Commr. of Commercial Taxes & anr v. The Ramco Cements Ltd. 40/100 any purchasing dealer. Section 7(2) provides independent right of any Dealer to obtain registration under the provisions of the CST Act. The said provisions of Section 7(2) of the Act are in two parts which are joined by the words "or" which means independent clauses. In the first category, the Dealer is liable to pay tax under the Sales Tax law of the appropriate State and in the second category, where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in the State or part, as the case may be, may, notwithstanding that he is not liable to pay tax under the Act, apply for registration under the Act. Therefore, the liability to pay tax under the provisions of CST fixed on the Seller is not a condition precedent or the only contingency for getting himself registered under the provisions of the CST Act. Even a person, who is only purchasing goods in the inter-State Trade or Commerce, who may not be liable to pay tax under the provisions of CST Act as a Seller can also secure registration under the provisions of the said Act and can continue with it. Even a dealer liable to tax under State Sales Tax law, which may include even new State GST Act, 2017, can obtain registration under CST Act. In the present case, the Assessee, a Cement Company, continues to be liable to pay tax under local TNVAT Act, 2006 if it sells or purchases any of these six goods also. The TNVAT Act also has not been completely repealed but now applies only to these six commodities after 1.7.2017, as per Section 174 of the TNGST Act, 2017.*

14. Therefore, on a conjoint reading of both sub-sections (1) and (2)of Section 7 of the CST Act, it is clear that the Respondents/Assessees and their likes can continue to have registration under the provisions of the CST Act and the contention raised on behalf of the Revenue that they have lost their entitlement to be so registered is misconceived and liable to be rejected. We, accordingly, reject the same.

15. The fact that the definition of 'goods' has been amended with effect from 1.7.2017 under the provisions of CST Act to restrict it to six commodities specified in Section 2(d) of the Act does not mean that the entire scope of the operation of CST Act has been amended. The rights of the purchasing Dealers of the goods including the rights to purchase at a concessional rate against Declaration in 'C' forms continues unabated under Section 8(3)(b) of the Act which has not been amended in 2017. The scope of the term 'goods' as defined in Section 2(d) of the Act does not obliterate such seemless flow of the Judgt. dt 9.3.2020 in W.A.Nos.3403/2019, etc. Commr. of Commercial Taxes & anr v. The Ramco Cements Ltd. 42/100 inter-State Trade or the operatability of the CST Act for both Selling Dealers as well as Purchasing Dealers throughout the country. The Legislature never intended to do so while restricting the applicability of the CST Act only to six specified commodities and take them out of GST Law and taking all other commodities except the six specified items in the GST Tax Law Regime. Such a view on the part of the Revenue is self defeatative and cannot be countenanced by the court. The freedom of trade including the right to purchase in the course of inter-State Trade or Commerce enshrined in Article 301 read with Article 304(b) is not taken away by GST Regime laws.

....

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 goods. 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.*

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 views 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. No order as to costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

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 31.5.2018 stands quashed and set aside along with the consequential Notices and Proceedings initiated against all the Assessees throughout the State of Tamil Nadu."

4. Both learned counsel submitted that the order of Division Bench has also been confirmed by a three-Judge Bench of the Apex Court and the Special Leave Petition filed by the State has been dismissed on 24.03.2021 in the case of *Commissioner of Commercial Taxes and Anr etc v The Ramco Cements Ltd etc* [S.L.P.(C) No(s). 15785 – 15788 of 2020] in the following terms:-

> *"Heard learned counsel for the parties at length.*
>
> *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(s) 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 petitions 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.

Consequently, all pending applications shall also stand disposed of."

5. Thereafter, the State of Tamil Nadu has also, having regard to the above order passed in S.L.P, issued Letter No.LW3/636513/2020 dated 15.04.2021 in line with the above orders.

6. In light of the above discussion, this writ petition is allowed. No costs. Connected miscellaneous petition is closed.

25.04.2023

Index:Yes/No
Neutral Citation:Yes
ssm

To:

1.The Principal Commissioner & Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai – 600 005.

2.The Deputy Commercial Tax Officer / State Tax Officer,
Srivilliputtur Assessment Circle,Sales Tax Office, Srivilliputtur.

DR. ANITA SUMANTH,J.

ssm

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