IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.P.Nos.10504, 10511, 10512, 10513 & 10514 of 2011
and
W.M.P.No.840, 843, 846 of 2023, M.P.Nos.1,1, of 2011, 1, 1 of 2013,

W.P.No.10504 of 2011

Indian Oil Corporation Limited,
(Rep. by its Chief Finance Manager
& Power of Attorney Holder, R.P.Sundaresan),
“Indian Oil Bhavan”,
139, Mahatma Gandhi Road,
Nungambakkam High Road,
Chennai – 600 034. .. Petitioner

vs

1.The Deputy Commissioner (CT),
(FAC) – IV,
Large Tax Payers Unit,
P.A.P.J.M.Buildings, IV Floor,
Greams Road, Chennai – 600 006.

2.The State of Tamil Nadu
Rep. by its Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai – 600 009. .. Respondents

W.P.Nos.10511 & 10512 of 2011

M/s. Hindustan Petroleum Corporation Limited,
Rep. by its Chief Regional Manager-
Chennai Retail Regional Office,
Ajoy Kumar Raj,
Fourth Floor, Thalamuthu Natarajan Bldg
1, Gandhi Irwin Road,
Egmore, Chennai – 600 008. .. Petitioner

vs

1.The Deputy Commissioner (CT)(II),
Fast Track Assessment Circle – II,
P.A.P.J.M. Buildings, IV Floor,
Greams Road,
Chennai – 60 0006.

2.The State of Tamil Nadu
(Rep. by its Secretary,
Commercial Taxes and Registration Department,
Fort St.George,
Chennai – 600 009. .. Respondents

W.P.Nos.10513 & 10514 of 2011

M/s. Bharat Petroleum Corporation Limited,
rep. by its Senior Finance Manager and
Power of Attorney Holder,
K.Venkatesan,
1, Ranganathan Gardens,
Off. 11th Main Road, Anna Nagar,
Chennai 600 040. .. Petitioner

vs

1.The Deputy Commissioner (CT)IV (FAC),
Large Tax Payer's Unit,
P.A.P.J.M. Buildings, IV Floor,
Chennai – 60 0006.

2.The State of Tamil Nadu
(Rep. by its Secretary,
Commercial Taxes and Registration Department,
Fort St.George,
Chennai – 600 009. .. Respondents

Prayer in W.P.No.10504 of 2011: Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus to forbear the first respondent herein from proceeding to recover Input Tax Credit relying upon Section 19(20) enacted by Tamil Nadu Act 22 of 2010 and brought into effect from 1.01.2007 by the further Act No.42 of 2010, in so far as pertaining to the sale of Kerosene (SKO) and Liquefied Petroleum Gas (LPG) sold at subsidized price for public distribution under the relevant instructions of the Ministry of Petroleum and Natural Gas, Government of India, and the Department of Food and Civil Supplies, Government of Tamil Nadu.

Prayer in W.P.No.10511 of 2011: Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus to forbear the first respondent herein from proceeding to recover Input Tax Credit relying upon Section 19(20) enacted by Tamil Nadu Act 22 of 2010 and brought into effect from 1.01.2007 by the further Act No.42 of 2010, in so far as pertaining to the sale of Kerosene (SKO) and Liquefied Petroleum Gas (LPG) sold at subsidized price for public distribution under the relevant instructions of the Ministry of Petroleum and Natural Gas, Government of India, and the Department of Food and Civil Supplies, Government of Tamil Nadu.

Prayer in W.P.No.10512 of 2011: Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration declaring that Section 19(20) enacted by Tamil Nadu Value Added Tax Act (Second amendment) Act, 2010 (Act No. 22 of 2010) as initially notified to come into force on 9th August, 2010 and later retrospectively brought into force from 1st January, 2007 by Tamil Nadu Value Added Tax (Special Provisions) Act, 2010 (Act No.42 of 2010) is confiscatory, unreasonable and arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India, and repugnant to the general scheme of the charging provisions of Section 3(2) and Section 3(3) and beyond legislative competence of the State Legislature under Serial No.54 of the State List and void and unenforceable.

Prayer in W.P.No.10513 of 2011: Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus to forbear the first respondent herein from proceeding to recover Input Tax Credit relying upon Section 19(20) enacted by Tamil Nadu Act 22 of 2010 and brought into effect from 1.01.2007 by the further Act No.42 of 2010, in so far as pertaining to the sale of Kerosene (SKO) and Liquefied Petroleum Gas (LPG) sold at subsidized price for public distribution under the relevant instructions of the Ministry of Petroleum and Natural Gas, Government of India, and the Department of Food and Civil Supplies, Government of Tamil Nadu.

Prayer in W.P.No.10514 of 2011: Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration declaring that Section 19(20) enacted by Tamil Nadu Value Added Tax Act (Second amendment) Act, 2010 (Act No. 22 of 2010) as initially notified to come into force on 9th August, 2010 and later retrospectively brought into force from 1st January, 2007 by Tamil Nadu Value Added Tax (Special Provisions) Act, 2010 (Act No.42 of 2010) is confiscatory, unreasonable and arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India, and repugnant to the general scheme of the charging provisions of Section 3(2) and Section 3(3) and beyond legislative competence of the State Legislature under Serial No.54 of the State List and void and unenforceable.

For Petitioner : Mr.KA.Parthasarathy
for Mr.N.Inbarajan
(in all writ petitions)

For Respondents : Mr.C.Harsha Raj
Additional Government Pleader
(in all writ petitions)

COMMON ORDER

(Order of the Court was made by Dr. ANITA SUMANTH.,J)

In W.P.No.10512 of 2011 and W.P.No.10514 of 2011, the prayer is for a declaration that Section 19(20) enacted by Tamil Nadu Value Added Tax Act (Second amendment) Act, 2010 (Act No. 22 of 2010) as initially notified to come into force on 9th August, 2010 and later retrospectively brought into force from 1st January, 2007 by Tamil Nadu Value Added Tax (Special Provisions) Act, 2010 (Act No.42 of 2010), is confiscatory, unreasonable and arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India, and repugnant to the general scheme of the charging provisions of Section 3(2) and Section 3(3) and beyond legislative competence of the State Legislature under Serial No.54 of the State List and void and unforceable.

2. The issue as raised above, is no longer res integra in view of the judgment of the Hon'ble Supreme Court in the case of *Jayam and Company v Assistant Commissioner and another* [(2016) 96 VST 1]. While upholding the vires of the provision itself, the Supreme Court has made it clear that the operation of the provision would only be prospective and not retrospective. W.P.No.10512 of 2011 and W.P.No.10514 of 2011 are hence dismissed.

3. In W.P.Nos. 10504, 10511 & 10513 of 2011, the petitioners seek a mandamus forbearing the first respondent from recovering Input Tax Credit relying upon Section 19(20) enacted by Tamil Nadu Act 22 of 2010 and brought into effect from 1.01.2007 vide Act No.42 of 2010, in relation to the sale of Kerosene (SKO) and Liquefied Petroleum Gas (LPG).

4. The affidavit filed in support of the writ petitions refer to certain notices that have been issued calling for particulars of sales of SKO and LPG. However, the petitioner, without producing the details called for, has instituted the present writ petitions.

5. Pending the writ petitions, interim injunction has been granted on 26.04.2011, which is now vacated. The Department shall take the assessments up for completion forthwith and complete the same in line with the principles of natural justice and in accordance with law, having regard to the judgment in the case of *Jayam and Company* (supra) within a period of twelve (12) weeks from date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

[A.S.M., J] [G.A.M., J]
15.10.2024

Index:Yes/No
Neutral Citation:Yes
ssm

To

1.The Deputy Commissioner (CT),
(FAC) – IV,
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Greams Road, Chennai – 600 006.

2.The Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai – 600 009.

3.The Deputy Commissioner (CT)(II),
Fast Track Assessment Circle – II,
P.A.P.J.M. Buildings, IV Floor,
Greams Road,
Chennai – 60 0006.

DR. ANITA SUMANTH.,J.
and
G. ARUL MURUGAN.,J.

ssm

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