



W.P.Nos.30386 to 30389 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Date : 30-08-2024

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR
and
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.30386 to 30389 of 2015
W.M.P.Nos.16112, 16114, 16115, 16116 of 2020
W.M.P.Nos.26234, 26237, 26238 and 26239 of 2024

Indian Oil Corporation Limited
(Represented by its Chief Finance Manager,
Mr.P.Radhakrishnan)
"Indian Oil Bhavan",
139, Mahatma Gandhi Road,
(Nungamakkam High Road),
Chennai - 600 034.

..... Petitioner in
all the cases

-VS-

1. The Deputy Commissioner (CT)-IV, (FAC)
Large Taxpayers Unit,
No.34, Dugar Towers, 5th Floor,
Marshalls Road,
Egmore, Chennai - 600 008.
2. The State of Tamil Nadu
Represented by its Secretary
CT & Registration Department,
Fort St. George,
Chennai - 600 009.



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3. Madurai Power Corporation (P) Limited
(Represented by its Managing Director,

P.R.Balakrishnan),
3, First Floor, Second Street,
Subba Rao Avenue,
College Road, Chennai - 600 006.

..... Respondents in
all the cases

Prayer in W.P.No.30386 of 2015 : Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of certiorari, calling for he records on the file of the first respondent herein in TIN:33270460111/2011-12, dated 13.08.2015 and quash the same.

Prayer in W.P.No.30387 of 2015 : Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of certiorari, calling for he records on the file of the first respondent herein in TIN:33270460111/2012-13, dated 13.08.2015 and quash the same.

Prayer in W.P.No.30388 of 2015 : Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of certiorari, calling for he records on the file of the first respondent herein in TIN:33270460111/2013-14, dated 13.08.2015 and quash the same.

Prayer in W.P.No.30389 of 2015 : Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of certiorari, calling for he records on the file of the first respondent herein in TIN:33270460111/2014-15, dated 13.08.2015 and quash the same.



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For Petitioner : Mr.N.Prasad
in all the writ petitions

For Respondents : Mr.Haza Nazirudeen, AAG
in all the writ petitions assisted by Mr.C.Harsha Raj, AGP
for R1 and R2

Mr.R.V.Easwar, Senior Advocate
for Mr.N.Murali for R3

COMMON ORDER

(Order of the Court was made by **R.SURESH KUMAR, J**)

Since the issue raised in all these writ petitions is common or one and the same, all these writ petitions were heard together and were disposed of by this common order.

2. That the writ petitioner Indian Oil Corporation Ltd., is a public sector undertaking and one of its petroleum product, namely the Low Sulphur Heavy Stock, in short "LSHS" had been sold to various buying dealers.



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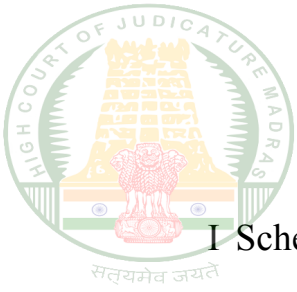
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3. The issue is related to the Assessment Years 2011-12, 2012-13, 2013-14 and 2014-15. During these years, the petitioner has sold LSHS to the third respondent. Accordingly, the petitioner paid tax at the rate of 5% under TNVAT Act, 2006.

4. The monthly returns also had been filed by the petitioner selling dealer for the Assessment Years 2011-12 to 2014-15.

5. On scrutiny of the monthly returns filed by the selling dealer, i.e., the petitioner, it was the stand of the first respondent that the rate of tax for LSHS is 14.5%, whereas the petitioner dealer paid only 5%, hence the difference of tax, i.e., 9.5% have to be paid. To that extent, show cause notices were issued by the first respondent on 17.04.2015 and 30.04.2015.

6. In response to the said notices, replies had been sent by the petitioner on 25.05.2015. The reply given by the petitioner was stating that the product LSHS which was sold by the petitioner dealer to the third respondent who is the buying dealer since is part of Item No.67 of Part B of



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WEB COPY I Schedule of TNVAT Act it carries only 5% tax, therefore the proposal made by the first respondent Revenue to levy 14.5% tax on LSHS is untenable.

7. The petitioner also has relied upon a clarificatory proceedings issued in Lr.No.VAT Cell/1434/2007(VCC.No.784), dated 27.06.2007, where the Commissioner of Commercial Taxes, Chennai has given the clarification that 'Gases' and 'Naphtha' are industrial input used in connection with the manufacture of goods in the State and taxable at 4% vide entry No.67 of Part B to Schedule I of TNVAT Act 2006 with effect from 01.01.2007. It has further been clarified that as goods produced are not taxable (i.e., electricity), the input tax paid on purchases of goods Naphtha is not eligible for Input tax credit.

8. This clarification given by the Commissioner of Commercial Taxes on behalf of the first respondent department / Revenue also had been quoted by the petitioner dealer in the reply given to the show cause notices.



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9. Despite the reply having been given, the first respondent since has not accepted the said reply, has proceeded to confirm the proposal by issuing the Assessment Order, dated 13.08.2015 in respect of all these Assessment Years, i.e., from 2011-12 to 2014-15 separately. These Assessment Orders, dated 13.08.2015 in respect of the aforesaid four Assessment Years are under challenge in these writ petitions.

10. That is how these four writ petitions came to be filed before this Court.

11. Heard Mr.R.V.Easwar, learned Senior Counsel appearing for the third respondent and Mr.N.Prasad, learned counsel appearing for the petitioner who are sailing.

12. The learned counsels would contend that, the rate of tax has been clearly demarcated in the TNVAT Act, i.e., in I Schedule to the said Act under sub-section (1) of Section 9, sub-section (2) of Section 3 as well as sub-section (2) of Section 3 respectively for various taxable items which have been scheduled in Part A, Part B and Part C respectively.



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13. It is to be noted that the goods which are enumerated in Part A of Schedule I are taxable at the rate of 1%, the goods which are enumerated in Part B are taxable at the rate of 5% and the goods which are enumerated in Part C of Schedule I of the TNVAT Act are taxable at the rate of 14.5%/

14. Having these three list of goods in Part A, Part B and Part C of Schedule I of TNVAT Act, the learned counsel appearing for the petitioner and the third respondent would contend that, insofar as the goods in question, i.e., LSHS it has not been found place specifically either in Part A or in Part B or in Part C.

15. However in entry 67 of Part B by Commodity Code No.2067, it has been provided that Industrial inputs, i.e., to say any goods falling under Part C of this Schedule including consumables, packing materials and labels other than those falling under II Schedule are to be taxed at the rate of 5% as per entry 66 of Part B of the Schedule.



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16. Since this LSHS is one of the petroleum product or petroleum bi-product since has not been specified in any of the entries in Part C, naturally that goods shall fall under entry 69 of Part C which is a residual entry which states that any other goods not specified in any of the schedule.

17. Relying upon these provisions of the schedule, the learned counsels would contend that, the LSHS since has not been specified in any of the schedule including Part C, that has to naturally fall in entry 69, i.e., residual entry of Part C.

18. If it falls under residual entry 69 of Part C and such goods is an industrial input, certainly that would fall back to entry 67 of Part B of Schedule I with Commodity Code 2067. Therefore the LSHS being the industrial input if it falls in the residual entry 69 of Part C, it has to be transferred to one of the Industrial input with CommodityCode 2067 in entry 67 of Part B of Schedule I. Therefore the said goods, i.e., LSHS would fall only as one of the industrial input goods falls under entry 67 of Part B and not under residual entry 69 of Part C.



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19. When that being so, the goods concerned namely LSHS is liable to be taxed only at the rate of 5% as one of the Part B entry goods and not at the rate of 14.5% by treating it as one of the Part C goods falling under the residual entry 69 of Part C.

20. This was the main contention of the learned counsel appearing for the writ petitioner as well as the third respondent.

21. In response to the said contention raised by the learned counsel appearing for the writ petitioner and the third respondent, Mr.Haza Nazirudeen, learned Additional Advocate General appearing for the first and second respondents would submit that, insofar as the LSHS is concerned, it may be an industrial input, if that is sold by the petitioner to the third respondent, by using such an industrial input, the third respondent manufactured a exempted goods, i.e., the electrical energy. Since electrical energy is an exempted goods is not taxable as it has been exempted under entry 25 to Part B of the 4th Schedule to TNVAT Act 2006, the buying dealer cannot issue a certificate of claiming input tax credit as per Rule 6(3) (b) of TNVAT Rules.



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22. When that being so, the buying seller is not entitled to buy the product namely the LSHS in a concessional or reduced rate of tax at the rate of 5%. Therefore the buying seller since is not entitled to claim ITC and to give certificate to that effect under TNVAT Rules, the buying seller since is not entitled to purchase the LSHS from the petitioner with concessional rate of tax, i.e., 5%, that goods carries with the taxability of 14.5% under Part C of Schedule I of TNVAT Act.

23. The learned Additional Advocate General would further contend that, since the LSHS has not been specifically enumerated in any of the schedule either in Part A or Part B or Part C of I Schedule, it should naturally falls under entry 69 of Part C alone.

24. The moment a goods falls under any of the entry in Part C, all such goods which form part of Part C since are liable to be taxed at the rate of 14.5%, the LSHS also since falls in residual entry 69 of Part C, that must also liable to be taxed at the rate of 14.5%. When that being so, the reduced rate of 5% paid by the petitioner since was found out during the scrutiny of



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the monthly returns of the selling dealer namely the petitioner for the relevant Assessment Years, the Revenue found it out that 9.5% tax has been escaped. Therefore in order to collect the same after issuing proper show cause notice and after having receipt of the reply given by the petitioner and having considered the same, the Revenue, i.e., the first respondent had come forward to process the Assessment Orders, which is impugned herein.

25. Therefore the learned Additional Advocate General would contend that, the impugned Assessment Orders are inconsonance with the rate of tax which are to be levied or taxed on the goods concerned namely the LSHS which was admittedly sold by the petitioner to the third respondent and fixing the tax only on the basis of the relevant provisions of the TNVAT Act as well as the Rules, as the rate of 14.5% is the tax to be levied on every goods falls under Part C of Schedule I of TNVAT Act, such an approach and the conclusion reached by the first respondent in passing the orders impugned are to be justified. Therefore the learned Additional Advocate General would contend that writ petitions are liable to be dismissed.



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26. We have given our anxious consideration to the submissions made by the learned counsel appearing on either side and also perused the materials placed before us.

27. The question that involves in these writ petitions to be decided is as to whether the Low Sulphur Heavy Stock (LSHS) would be attracting 5% tax as per Part B or 14.5% tax as per Part C of Schedule I of the TNVAT Act.

28. The goods that was sold by the petitioner to the third respondent admittedly is LSHS. It is also the admitted fact that LSHS is an industrial input. This become evidenced in the very impugned order itself as the Revenue has accepted that the LSHS is an industrial input. Even otherwise, the LSHS being used as an industrial input at the manufacturing process of the third respondent factory, where the ultimate manufactured goods is nothing but electrical energy. Therefore there is no conflict with regard to the nature of the goods that was sold by the petitioner to the third respondent.



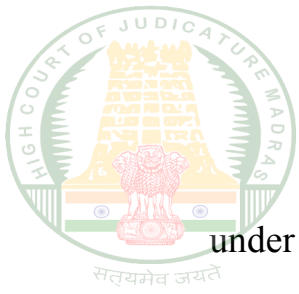
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29. If LSHS being an industrial input, whether it has been enumerated specifically in any of the parts of the Schedule I of the TNVAT Act is to be looked into. Admittedly it has not been specified in any of the entry of either Schedule A or Schedule B or Schedule C. If a particular goods is not specified in any of the entry of the I Schedule, those goods would automatically fall in the residual entry of Part C, i.e., Entry No.69 which reads thus "Any other goods not specified in any of the Schedules (Code No.301)."

30. Therefore the LSHS also falls under Entry 69 of Part C. This is also an admitted fact on the part of the Revenue because, the Revenue in the impugned orders has categorically stated that, the sale of LSHS is taxable at 14.5% from 12.07.2011 under residual entry 69 of Part C of I Schedule to TNVAT Act 2006.

31. To that extent of the LSHS reaching the residual entry of 69 of Part C of Schedule I, absolutely there has been no quarrel or dispute. However the moment it falls in entry 69 of Part C, whether it can be retained



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under entry 69 Part C for the purpose of levying the tax of 14.5% or it should be transferred to entry 67 of Part B for the purpose of levying tax at 5% is the question.

32. In order to delve into the said question, if we look at entry 67 of Part B which reads thus :

"Industrial inputs, that is to say, any goods falling under Part C of this Schedule, including consumables, packing materials and labels but excluding plant and machinery, ethyl alcohol, absolute alcohol, methyl alcohol, rectified spirit, neutral spirit and cement, for use in manufacture and for use in assembling, packing or labelling in connection with such manufacture, inside the State, of goods other than those falling under Second Schedule."

33. As per entry 67 in Part B any industrial input, i.e., to say any goods falling under Part C of this Schedule, i.e., Schedule I including consumables, packing materials and labels would be considered as one of the goods under entry 67 of Part B. Some of the items were specifically



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excluded, i.e., plant and machinery, ethyl alcohol, absolute alcohol, methyl alcohol, rectified spirit, neutral spirit and cement, for use in manufacture and for use in assembling, packing or labelling in connection with such manufacture, inside the State.

34. If we look at the entry 67 @ Part B carefully, the words used by the legislature is that, industrial inputs, i.e., to say, any goods falling under Part C of this schedule, the word falling under Part C of this schedule includes all items falling under Part C, i.e., all the specified entries in Part C as well as the residual entry in Part C. It is no doubt clear that, the LSHS even according to the first respondent / Revenue since has not been specified in any of the entry in Part C has already fell in residual entry of 69.

35. It is also an admitted fact that LSHS is an industrial input. If any industrial input falls in any of the entry of Part C, that would be construed as one of the goods in the entry with Commodity Code 2067 of entry 67 of Part B of Schedule I. If that being so, the Low Sulphur Heavy Stock, i.e., LSHS being an industrial input already fell in entry 69 of Part C of Schedule



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I would stand automatically transferred to entry 67 of Part B. Once the LSHS finds place entry 67 of Part B that goods is liable to be taxed at 5%.

36. Therefore the attempt made by the Revenue to impose the tax of 14.5% on LSHS by simply keeping the said goods only under the residual entry 69 of Part C is nothing but ignoring entry 67 of Part B. Entry 67 since has specifically been made for industrial inputs by including something and excluding certain goods and the LSHS being one of the industrial input, naturally be enumerated as one of the industrial input under entry 67 of Part B of Schedule I.

36. The word "falling" occurred in entry 67 of Part B of Schedule I have a larger meaning of taking all the entries of Schedule C including the entry 69 being a residual entry. Otherwise if the legislature intended to exclude the residual entry from bringing them to entry 67 of Part B as a industrial input instead of the word falling, the legislature would have used the word "specified". Since the legislature use the word falling, that would have a connotation of all items falling under various entries in Part C which includes entry 69 residual entry of Part C.



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37. Therefore absolutely there has been no reason for the Revenue to bring the LSHS as a taxable item at the rate of 14.5% under residual entry 69 of Part C of I Schedule of TNVAT Act, 2006. The additional reason stated by the Revenue that the buying seller namely the third respondent since has produced only electrical energy being an exempted goods or non-taxable goods is not eligible or entitled to claim ITC and therefore such certification under Rule 6(3)(b) of TNVAT Rules cannot be given, therefore at the concessional rate of tax, the buying seller is not entitled to buy the product concerned namely LSHS, is completely a misquoted. The reason being that, whether the buying seller is entitled to claim ITC or not is a separate issue, that would no way stand in quantifying the rate of tax as it has been quantified, for which Schedule I has been appended to TNVAT Act, 2006, where whatever the goods fall in Part A of Schedule I would be liable to be taxed at 1%, Part B would be liable to be taxed at 5%. Like that Part C goods would be liable to be levied at the rate of 14.5% tax.

38. Here in the case in hand, the LSHS as we discussed herein above even though falls under residual entry 69 of Part C, it shall only be treated



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as one of the goods fall under entry 67 of Part B, because it is admittedly an industrial input.

39. When that being the position, the impugned Assessment Orders levying the tax at the rate of 14.5% on the product LSHS of the petitioner for the relevant Assessment Years through the impugned Assessment Orders are unsustainable and therefore liable to be set aside.

40. Resultantly, the impugned orders are set aside and all these four writ petitions are allowed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K., J.)

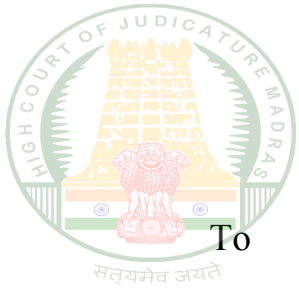
(C.S.N., J)

30.08.2024

Index : Yes / No

Speaking order / Non-speaking order

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To

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1. The Deputy Commissioner (CT)-IV, (FAC)

Large Taxpayers Unit,
No.34, Dugar Towers, 5th Floor,
Marshalls Road,
Egmore, Chennai - 600 008.

2. The Secretary

State of Tamil Nadu
CT & Registration Department,
Fort St. George,
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3. The Managing Director

Madurai Power Corporation (P) Limited
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