BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.30506 of 2023
and
W.M.P.(MD)No.26243 of 2023 & 2634 of 2024

M/s.Sri Venkatramanaswamy Blue Metals,
Represented by its Partner S.Prathap. ... Petitioner

Vs.

The Assistant Commissioner (ST)(FAC),
Karur-2 Assessment Circle,
Karur. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the impugned proceedings of the respondent in CST No.230980/2020-2021/TIN.33513681349/2020-2021 dated 09.11.2023 and quash the same as passed contrary to the provisions of the Central Sales Tax Act, 1956 and also passed in violation of principles of natural justice.

For petitioner : Mr.P.Rajkumar
For respondent : Mr.J.K.Jeyaselan
Government Advocate

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ORDER

Heard learned counsel for the petitioner and learned Government Advocate for the respondent.

2. The petitioner/Partnership firm, engaged in mining activities, is before this Court aggrieved by the impugned order passed by the respondent dated 09.11.2023 for the assessment year 2020-21 under the provisions of the Central Sales Tax Act, 1956.

3. The impugned order precedes the notices dated 17.07.2023 and 27.09.2023. The petitioner has replied to the respective notices.

4. The allegation against the petitioner is that the petitioner had procured high speed diesel against the Form-C on payment of 2% CST from the suppliers outside the State of Tamil Nadu for a sum of Rs.1,86,19,608/-. The specific allegation against the petitioner is that the petitioner has wrongly utilised the same, contrary to the Section 8(3)(b) of Central Sales Tax Act, 1956 and

therefore, attracted sting/penalty under Section 10(d) and 10A of the Central Sales Tax Act, 1956.

5. The case of the petitioner is that the impugned order is without jurisdiction as the petitioner has been made liable to be paid the tax pursuant to the impugned order as it is evident from the Form O issued to the petitioner to recover the tax and penalty in Form-RR, both are dated 09.11.2023, which accompanied the impugned assessment order dated 09.11.2023 for the same assessment year.

6. The case of the petitioner is that the petitioner’s factory and mine are situated at the distance of approximately four kilometers and that the diesel, that was purchased by the petitioner, was utilised exclusively for mining activity.

7. That apart, the learned counsel for the petitioner submits that the petitioner has also purchased the high speed diesel for a sum of Rs.3,22,49,781/- from outside the State without Form-C and has further purchased diesel locally for a sum of Rs.16,46,532/-.

8. It is submitted that the procurement from other states without Form-C were at high rate tax as is applicable in the respective States.

9. On the other hand, the learned Government Advocate for the respondent would submit that the present Writ Petition is devoid of merits and is liable to be dismissed. In this connection, the learned Government Advocate for the respondent has drawn attention to paras 6,7,8 and 11 of the counter, which are reproduced below:

> 6) It is submitted that the respondent has requested the petitioner to file necessary day to day stock register for manufacture of goods and sale of blue metals, rough Block and diesel, Trading, Profit & Loss Account and copy of IT returns but the petitioner has not filed in the above details & records except Profit & Loss Account. The diesel purchases have also been used in the manufacture of goods for furtherance of his business. The petitioner has also admitted before the inspecting authorities at the time of inspection, the purchase of diesel from other state against C form declaration.

7) It is submitted that the petitioner has purchased diesel against C form declaration and it has fully utilized in mining but entire quantity of diesel had shown as expenses in the profit & loss Account which is incorrect and contrary to facts and circumstances of the case. The petitioner has stored in a common storage underground tank and he was failed to maintain the records and it has not produced to the respondent but the petitioner has taken for consumption daily, the diesel purchased against C form declaration for which permitted for use in mining only as per the CST Registration Certificate. But the petitioner has purchased diesel has also used in transportation of goods which is contravention of the purpose of declared in the CST Registration certificate. The petitioner has misused the C form declaration. Hence, the penalty imposed under section 10-A of the CST Act by the respondent which is proper and perspective manner.

8) If the petitioner has not used C form declaration for the transportation of goods, the higher rate of tax is eligible, but the petitioner is availed concessional rate of tax against C form declaration for transportation of goods which is misused and contrary to the Act. Hence, the levy of differential rate of tax and penalty imposed by the respondent is covered under the provisions of the Act. The respondent has also given sufficient opportunity for filing reply along hearing but the petitioner is contention is not granted personal opportunity which is incorrect and unwarranted.

> 10) I submit that the averment contained in Paras 11 to 14 of the affidavit filed by the petitioner stated that the imposition of penalty under section 10-A of the Act is correct or not but the petitioner has misused the C form declaration because of the reason the imposition of penalty under section 10-A of the Act is warranted and sustained.

10. The learned Government Advocate for the repsondent further submits that even otherwise, the petitioner has an alternative remedy before the Appellate Authority and therefore, on this kind also, this Writ Petition is liable to be dismissed. Hence, prays for dismissal of this Writ Petition.

11. I have considered the arguments advanced by the learned counsel for the petitioner and learned Government Advocate for the respondent.

12. There is no dispute regarding the procurement of the high speed diesel from within the State and outside the State. The details of procurements within the State and outside the State both against Form-C and without Form-C are as under:

S.No	Procurement details	Amount Rs.
1.	Outside the State without Form-C	3,22,49,781
2.	Within the State with Form-C	16,46,532

13. The above procurement is over and above the procurement against Form-C for a sum of Rs.1,86,19,608/-. The notice, that precedes the impugned order, also admits that the petitioner had a common storage tank. The law on the subject is not new where common storage is involved. In case the petitioner had only procured High Speed Diesel only against the Form-C, the Department would be justified in concluding that the petitioner has wrongly utilised the procurement made against the Form-C under Section 8(3)(b) of the Central Sales Tax Act, 1956, warranting the penalty both under Section 10(d) and 10A of the Central Sales Tax Act, 1956.

14. Since the High Speed Diesel is stored commonly, it becomes a part of the homogeneous mass in the Common Storage Tank. There is no one to one relation between the procurement made against the Form-C and procurement

made without Form-C. As long as the entire quantity was not against Form-C, the question of imposing penalty cannot be countenanced. Therefore, there is no merits in the impugned order. That apart, the tax, if any, on the alleged misuse of Form-C is to be recovered only from the suppliers.

15. In this case, I do not find any misuse of Form-C by the petitioner as the tax were procurement without Form-C. Therefore, the impugned order is liable to be quashed as arbitrary and unjust. The levy of tax and penalty on the petitioner is unsustainable. Though the petitioner has alternative remedy, the Court is inclined to allow this Writ Petition, as no useful purpose will be served by relegating the petitioner to work out the remedy before the Appellate Authority.

Accordingly, this Writ Petition stands allowed. Consequently, connected miscellaneous petitions are closed. No costs.

Index : Yes / No **10.07.2024**
Internet : Yes / No
apd

To

The Assistant Commissioner (ST)(FAC),
Karur-2 Assessment Circle,
Karur.

C.SARAVANAN, J.

apd

W.P.(MD) No.30506 of 2023

10.07.2024