

GST : Where assessee was making inter-State purchases of High Speed Diesel Oil on concessional rate of tax by way of Form 'C' and after introduction of GST regime, Department's site had been blocked to deny access to assessee and other similarly placed persons from downloading Form 'C', GST Authorities were directed to permit assessee to download Form 'C' and take necessary action in this regard

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[2019] 109 taxmann.com 476 (Madras)

HIGH COURT OF MADRAS

K.R.G. Textile Mills

v.

State of Tamil Nadu*

M. SUNDAR, J.

W.P. NO. 25549 OF 2019

AUGUST 28, 2019

Classification of goods - Tamil Nadu Goods and Services Tax Act, 2017 - High Speed Diesel Oil - Assessee, a manufacturer of Fabrics in State of Tamil Nadu, was making inter-State purchases of High Speed Diesel Oil on concessional rate of tax at 2 per cent by way of Form 'C' - After introduction of GST regime, it continued to purchase High Speed Diesel oil, but could not download Form 'C' - GST Authorities informed assessee that after introduction of GST regime it was not entitled to make purchase of High Speed Diesel Oil from other States at concessional rate and, therefore, Department's site had been blocked to deny access to assessee and other similiary placed persons from downloading Form 'C' - Whether GST Authorities were to be directed to permit assessee to download Form 'C' and take necessary action in this regard forthwith - Held, yes [Para 10] [In favour of assessee]

(NR)

FACTS

- The assessee, a manufacturer of Fabrics in the State of Tamil Nadu, was making inter-State purchases of High Speed Diesel Oil on concessional rate of tax at 2 per cent by way of Form 'C'.
- After introduction of the GST regime, the assessee continued to purchase High Speed Diesel Oil, but it could not download Form 'C'. When it enquired with the revenue, it was informed that after introduction of GST regime on and with effect from 1-7-2017, it was not entitled to make purchase of High Speed Diesel Oil from other States on concessional rate of tax and, therefore, the Department's site had been blocked to deny access to the assessee and other similarly placed persons from downloading Form 'C'.
- On writ:

HELD

- The undisputed obtaining legal position as of today is that the above said issue came up for consideration before another Judge of the Madras High Court in the case of *Ramco Cements Ltd. v. CCT* [\[2018\] 99 taxmann.com 20](#) and the Court allowed the writ petition filed by the assessee and directed the revenue to permit the assessee to download Form 'C'. [Paras 6 and 7]
- Post *Ramco Cements Ltd. (supra)* matter, a similar situation came up before another Single Judge of the Madras High Court in the case of *Southern Cotspinners Coimbatore (P.) Ltd.* [W.P. No. 12520 of 2019, dated 26-4-2019] and the Court allowed the writ petition and held that necessary action to be taken by the department forthwith. [Para 9]
- In view of the aforesaid, it follows as a natural sequitur that instant writ petition stands allowed. Consequently necessary action has to be taken by the department forthwith which in any case shall not be more than 5 working days from the date of receipt of a copy of this order. [Para 10]

CASE REVIEW

Ramco Cements Ltd. v. CCT [\[2018\] 99 taxmann.com 20 \(Mad.\)](#) (para 10) and *Southern Cotspinners Coimbatore (P.) Ltd.* [W.P. No. 12520 (Mad.) of 2019, dated 26-4-2019] (para 10) *followed*.

CASES REFERRED TO

Ramco Cements Ltd. v. CCT [\[2018\] 99 taxmann.com 20 \(Mad.\)](#) (para 6) and *Southern Cotspinners Coimbatore (P.) Ltd.* [WP No. 12520 of 2019, dated 26-4-2019] (para 9).

T. Balaji *for the Petitioner.* **Mohammed Sharriq**, Special Government Pleader (Taxes) *for the Respondent.*

ORDER

1. Mr.T.Balaji, learned counsel on record for sole writ petitioner is before this Court. Mr.Mohammed Shaffiq, learned Special Government Pleader (Taxes) accepts notice on behalf of all the four respondents.
2. With consent of both learned counsel i.e., counsel for writ petitioner as well as the Revenue counsel, the main writ petition itself is taken up for disposal, though this writ petition is listed before this Court today under the caption 'FOR ADMISSION' in the motion list.
3. Both the learned counsel submitted, without any disputation or dis-agreement, that the entire matter turns on a very narrow compass and therefore, the main writ petition itself can be disposed of.
4. The business activity and the purpose for which High Speed Diesel is used is articulated in paragraph No.5 of the affidavit filed in support of the instant writ petition, which reads as follows:

'5 It is submitted that, even after introduction of GST Act, 2017, the petitioner effected inter-state purchase of HSD from suppliers outside the State for use in captive power generation i.e., diesel Gen sets in manufacture of Fabrics in the State of Tamil Nadu. For the purchases made by the petitioner past one year, the petitioner tried to down load the 'C' from the Commercial Taxes Department website, but could not download the 'C' form and issue the same to the supplier. It is submitted that due to summer the petitioner textiles Mills is facing frequent power fluctuations and hence the petitioner is running the machineries with the power generated from diesel Gen sets wherever required. Even though as per the certificate of registration issued to the petitioner under

the CST Act, the petitioner is entitled to purchase HSD, the Commercial Taxes Department's website has disintegrated the petitioner from downloading the 'C' form for issuing to its supplier for purchasing HSD.'

5. In this writ petition, the petitioner was making inter-state purchases of High Speed Diesel Oil on concessional rate of tax at 2% by way of 'C' forms.

After introduction of 'Goods and Services Tax' ('GST' for brevity), petitioner continued to purchase High Speed Diesel Oil, but, however, they could not download the 'C' forms. When the petitioner enquired with the Revenue Department, the petitioner was informed that after introduction of GST regime on and with effect from 01.07.2017, the petitioner was not entitled to make purchase of High Speed Diesel Oil from other States on concessional rate of tax i.e., at 2% and therefore, the Department's site has been blocked to deny access to the petitioner and other similarly placed persons from downloading 'C' forms. It may not be necessary to advert to those facts any further, as there is virtually no dispute on the factual aspects of the matter as well as the obtaining legal position as of today.

6. The undisputed obtaining legal position as of today is that, the above said issue came up for consideration before another Hon'ble Judge of this Court in *Ramco Cements Ltd. v. CCT [2018] 99 taxmann.com 20* being a batch of 71 writ petitions and a common order came to be passed by a Hon'ble Single Judge on 26.10.2018. In the batch, the lead matter is 'The Ramco Cements Ltd.,' and therefore, this common order dated 26.10.2018 shall be referred to as 'Ramco Cements matter'.

7. In the Ramco Cements matter, this Court allowed the writ petitions filed by the assesseees and directed the Revenue to permit the petitioner assesseees to download 'C' forms. It is not in dispute (as submitted by the learned counsel for Revenue) that though an intra Court appeal has been preferred against Ramco Cements matter with a delay of three days, the same remains unnumbered as of today. In other words, Ramco Cements authored by a Hon'ble Judge of this Court is holding the field as of today.

8. Post Ramco Cements matter, a similar situation came up before another Hon'ble Single Judge vide W.P.No.12520 of 2019 and the same came to be disposed of on 26.04.2019. In the said order, learned Single Judge held that till such time the order of Ramco Cements is either stayed or reversed it is incumbent upon all Assessing Authorities within the State of Tamil Nadu to apply the rationale and the principle laid down in Ramco Cements with regard to pending assessments. This position is not disputed.

9. In other words, there is no dispute or disagreement that the instant writ petition falls clearly within the four corners of Ramco Cements matter as well as the aforesaid order of another Hon'ble Single Judge made in *Southern Cotspinners Coimbatore (P.) Ltd.*, [W.P.No.12520 of 2019 (dated 26-4-2019)]. The most relevant paragraphs are paragraphs 5 and 6 of *Southern Cotspinners Coimbatore (P.) Ltd.* case and the same read as follows:

'5. 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 this Writ Petition 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

6. In the aforesaid circumstances and in the light of the order passed above, this Writ Petition is allowed. Consequently, necessary action to be taken by the department, forthwith. No costs. Connected Miscellaneous Petition is closed.'

10. In the light of the narrative supra and in the light of the trajectory, which this matter has taken at the admission stage, it follows as a natural sequitur that instant writ petition stands allowed. Consequently, necessary action has to be taken by the Revenue/Department/Respondents forthwith which in any case shall not be more than 5 working days from the date of receipt of a copy of this order.

11. This writ petition is allowed. No costs.

S.K. JAIN

*In favour of assessee.