

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 09.12.2019**

CORAM:

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.P.No.18156 of 2012**  
**and M.P.No.1 of 2012**

Bharat Petroleum corporation Ltd.,  
(Represented by its manage Finance - (S/S),  
N.Lakshmi,  
Southern Region I Floor,  
No.1, Ranaganathan Garden,  
Off. 11<sup>th</sup> Main Road, Anna Nagar (West),  
Chennai - 600 040. .... Petitioner

Vs.

- 1.The Deputy Commissioner (CT-I) LTU,  
Large Tax Payers Unit,  
Durga Tower, Egmore,  
Chennai - 600 008.
- 2.The Authority for Clarification  
and Advance Ruling,  
Ezhilagam, Chepauk,  
Chennai - 600 005. .... Respondents

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**Prayer:** Writ Petition is filed under article 226 of the Constitution of India, writ of Certiorari, to call for the records on the file of the second respondent herein AC AAR 47/2011-12, dated 03.04.2012 and quash the same as illegal and violated in so far as classifying Bitumen Emulsion

under SI.No.18 of Part B of the first schedule instead of SI.No.69 of Part C of the first schedule under the Tamil Nadu Value Added Tax At, 2006.

For Petitioner : Mr.N.Prasad

For Respondents : Mr.V.Haribabu  
Additional Government Pleader.

**ORDER**

This petition is filed to call the records on the files of the second respondent herein AC AAR 47/2011-12, dated 03.04.2012 and quash the same as illegal and violated in so far as classifying Bitumen Emulsion under SI.No.18 of Part B of the first schedule instead of SI.No.69 of Part C of the first schedule under the Tamil Nadu Value Added Tax At, 2006.

2. A short point that arises for consideration in this writ petition is whether the "Bituman Emulsion" traded by the Petitioner was classifiable as a product under S.No. 18 of Part (B) of the First Schedule to the Tamil Nadu Value Added Tax Act (in short TANVAT Act), 2006 or under residuary heading at S.No. 69 of Part (C) of the First Schedule under the TANVAT Act attracting 14% of Value Added Tax.

3. The Petitioner had invoked the jurisdiction of the State Level

Authority for Clarification and Advance Ruling (in short, 'the Advance Ruling Authority') under 48 (A) of the TNVAT Act, 2006. The Advance Ruling Authority, by the impugned order, clarified that "Bitumen Emulsion" was to be classified under S.No.16 of the Pre-Notice attracting 14.5% VAT.

4. The trigger for approaching the Advance Ruling Authority appears to be pre-assessment notice issued by the Deputy Commissioner (CT-I) LTU, Chennai (First Respondent) herein. The pre-revision notice sought to be classify Bituman Emulsion traded by the Petitioner under Entry Tax S.No.50, Part (C) of the First Schedule to the TANVAT Act, attracting 12.5% VAT.

5. The learned counsel for the Petitioner referred to a recent decision of the Hon'ble Supreme Court rendered in "**Commissioner of Commercial Tax, U.P Vs A.R. Thermosets (Pvt.) Ltd.**" reported in 2016 94 VST 258 (SC), wherein, in Page Nos. 264, 268, 269 & 270 while dealing with an identical situation under U.P. Value Added Tax Act, 2008, the Court, has observed as under:

"Whether the bitumen and bitumen emulsion are one and the same commodity for the purposes of interpretation of Entry No.22,

Schedule II, Part A of the U.P. Value Added Tax Act, 2008 as was originally enacted, ie., up to enforcement of Notification No. 2758, dated September 29, 2008?

Bitumen and emulsion are two forms of bituminous binders which serve some common purposes in road construction and maintenance. Bitumen and emulsion are selected for various applications depending upon some parameters like weather conditions, availability of material, economic aspects and availability of construction time. Bitumen needs preheating whereas emulsion is ready to use. It has been observed from previous studies that the physical properties of the emulsion after natural sun drying are almost similar to that of bitumen as the water present. In the binder evaporates and makes the matrix harder as obtained with the bitumen. It may, therefore, be concluded that bitumen and emulsion may be treated at par as far as their significance for application in their respective area is concerned.

At the very inception, we think it absolutely seemly to state that the nature and composition of the product or the goods and the particular entity in the classification table is important. Matching of the goods with the entry or entries in the Schedules is tested on the basis of identity of the goods in question with the entry or the contesting entries and by applying the

common parlance test, ie, whether the goods as understood in commercial or business parlance are identical or similar to the description of the entry. Where such similarity in popular sense of meaning exists, the generic entity would be construed as including the goods in question. Sometimes on certain circumstances the end use test, ie., use of the goods and its comparison with the entry is applied.

The entry in question uses the word "bitumen" without any further stipulation or qualification. Therefore, it would, in our opinion, include any product which shares the composition identity, and in common and commercial parlance is treated as bitumen and can be used as bitumen. When we apply the three tests, namely, identity, common parlance and end-use concluded that bitumen and emulsion may be treated at par as far as their significance for application in their respective areas is concerned.

A reading of the aforesaid definitions and the scientific text clearly reveal that bitumen in its original form is solid but melts when heated, for it is used in molten stage. There is no difficulty to appreciate that bitumen emulsion comes into existence when bitumen is treated with emulsifiers and other chemicals to attain a liquid form. It has a huge advantage and added benefit because it is not to be heated and detained in its liquid form and has better stability and thus, saves time and cost components. That apart, it ensures its use at the stage of application. Needless to say it is comparatively less hazardous. Bitumen consists of four forms of variants, namely, solid bitumen, polymer bitumen, crumb rubber modified bitumen and bitumen emulsion. The stand of the Revenue is that the word "bitumen" must be conferred a narrow meaning for the reason that the Legislature has not thought it appropriate to use the prefix or suffix like "all", in all forms or of all kinds. It may be immediately clarified that bitumen is a generic expression which would include different types of bitumen. Revenue, however, as stated earlier, intends to apply it restrictively. The said submission has a fundamental fallacy. Entry 22 does not exclude or specify that it would not include bitumen of all types and varieties.

The entry in question uses the word "bitumen" without any further stipulation or qualification.

Therefore, it would, in our opinion, include any product which shares the composition identity, and in common and commercial parlance is treated as bitumen and can be used as bitumen. When we apply the three tests, namely, identity, common parlance and end-use to the goods and the entry in question, bitumen emulsion would be covered by the entry bitumen. It is worthy to note that bitumen emulsion matches the entry as it is only one of the varieties of bitumen. Bitumen emulsion is processed bitumen, but the process has not changed its composition, commercial identity or its use. Bitumen emulsion is regarded and performs the same function as bitumen. As a result of processing, neither the primary character nor the composition is lost. Emulsification only eases and provides proficiency to the use of application of bitumen. Hence, in popular and commercial sense, bitumen emulsion is nothing but bitumen, which is in liquid form and is user friendly.

It is perceivable that the Legislature has used the word "bitumen" and treated it as a separate entity. As we notice, it has not indicated that this was done with the intention and purpose to exclude some type or variety of bitumen. All bitumen products, which share and have common composition and commercial entity, and meet the popular parlance test, is, therefore, meant to be covered by the said entry. In the instant case, even the end-use test is satisfied. There is nothing in the entry to suggest and show that the entry is required to be given a restrictive and a narrow meaning."

6. The learned Additional Government Pleader fairly submits that the issue is covered by the decision of the Hon'ble Supreme Court.

7. Entry 18 of Part B of the First Schedule to the TNVAT Act, 2006, deals with "Bitumen" and the commodity code for "Bitumen" is 2018. The Hon'ble Supreme Court has also concerned that "Bitumen Emulsion" and has held that both "Bitumen" and "Bitumen Emulsion" are one and same.

8. The Hon'ble Supreme Court further held that the "Bitumen Emulsion" matches the entry as it is only one of the variety of "Bitumen". "Bitumen Emulsion" is a processed "Bitumen", but the process does not change its composition, commercial identity or its use. The Court further held that the "Bitumen Emulsion" is regarded and performs the same function as "Bitumen" and as a result of processing, neither the primary character nor the composition is lost.

9. Thus "Bitumen Emulsion" is to be classified as "Bitumen" falling under Serial 18 of Part B of the First Schedule to the TNVAT Act, 2006 and is liable to be taxed at the rate prescribed therein for "Bitumen".

10. In view of the above, the present Writ Petition stands allowed with consequential relief. No costs. Consequently, connected Miscellaneous Petition is closed.

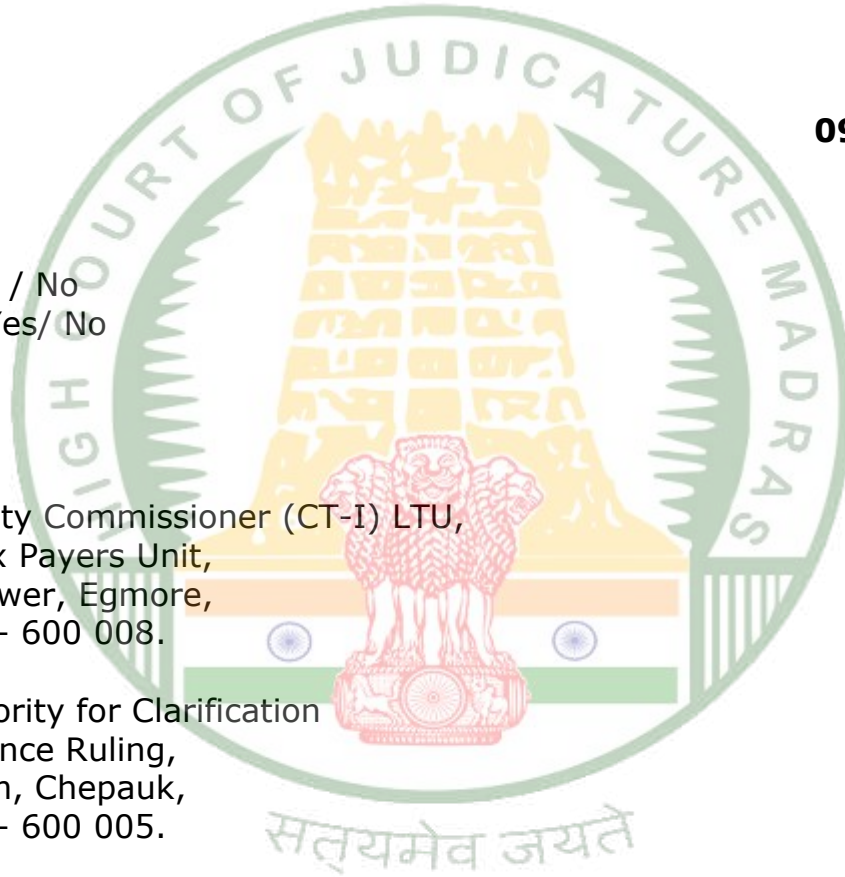
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Index : Yes / No  
Internet : Yes/ No  
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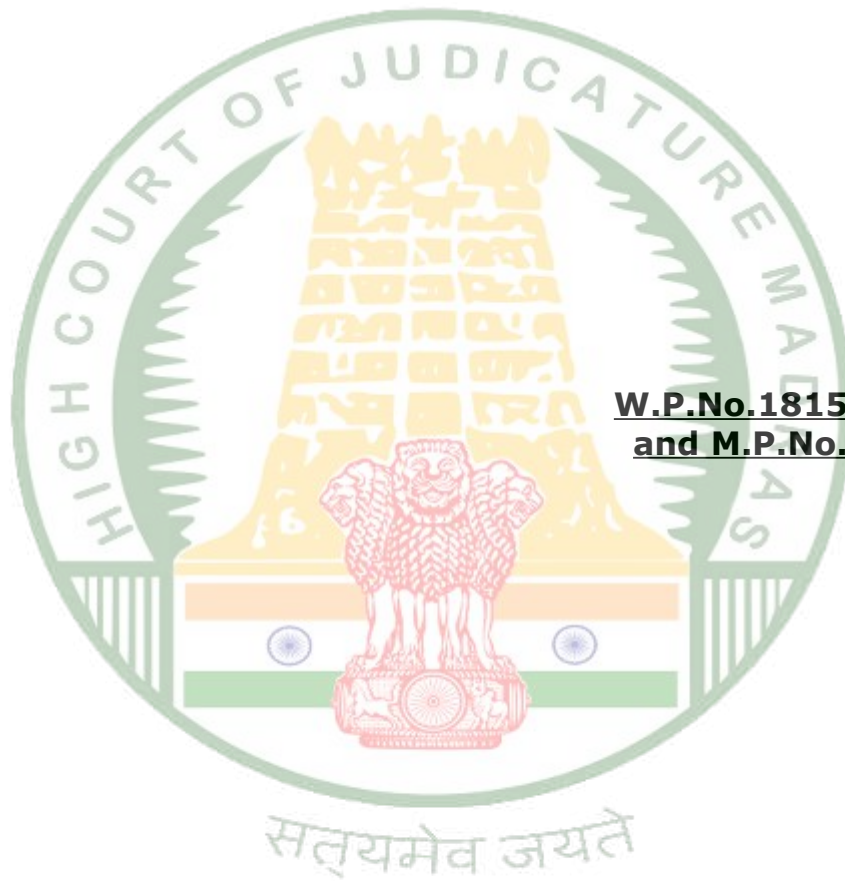
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**C.SARAVANAN, J.**

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