BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD).No.20118 of 2014

M/s V.R.Muthu & Brothers,
represented by its Partner,
443 Main Bazaar,
Virudhunagar. ... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes and Registration Department,
Fort St. George, Chennai - 600 009.

2. The Assistant Commissioner (CT),
Tuticorin-III, Tuticorin.

3. The Commercial Tax Officer - I,
Virudhunagar Assessment Circle,
Virudhunagar. ... Respondents

This Writ Petition is filed under Article 226 of the Constitution of India praying for a Writ of Declaration, declaring the provisions of Sec.19(20) of the Tamil Nadu Value Added Tax Act inserted by Tamil Nadu Value Added Tax (Amendment Act 22 of 2010) as beyond the legislative competence of the State under Entry 54 of List II to the Seventh Schedule to the Constitution of India and is repugnant with the charging provisions of Sections 3(2) and 3(3) of the Tamil Nadu Value Added Tax Act, and in any view, the retrospective operation of the said Sec.19(20) of the Tamil Nadu Value Added Tax Act from 1st January 2007 infringes the fundamental right under Article 14 and 19(1)(g) and unenforceable.

For Petitioner :Mr.S.Raja Jeyachandra Paul

For Respondents :Mr.R.Karthikeyan
Additional Government Pleader

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O R D E R

[Order of the Court was made by **R.SUBBIAH,J.**]

The writ petition has been filed to declare the provisions of Sec.19(20) of the Tamil Nadu Value Added Tax Act inserted by Tamil Nadu Value Added Tax (Amendment Act 22 of 2010) as beyond the legislative competence of the State under Entry 54 of List II to the Seventh Schedule to the Constitution of India and is repugnant with the charging provisions of Sections 3(2) and 3(3) of the Tamil Nadu Value Added Tax Act, and in any view, the retrospective operation of the said Sec.19(20) of the Tamil Nadu Value Added Tax Act from 1st January 2007 infringes the fundamental right under Article 14 and 19(1)(g) and is a unenforceable Act.

2.The case of the petitioner is that he is a dealer in gingelly, gingelly oil, groundnut oil, mustard oil and appalam and is registered on the files of the third respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. The petitioner is the sole distributor for sale of the above commodities in the State of Tamil Nadu manufactured by its sister concern M/s.V.V.V.Sons Edible Oils Ltd., Virudhunagar. The petitioner in the course of business effects purchases of gingelly, gingelly oil, groundnut, mustard oil and appalam from it sister concern M/s.V.V.V.Sons Edible Oils Ltd., upon payment of tax and in turn effects sales locally to registered dealers within the State of Tamil Nadu. The State of Tamil Nadu switched over to the Value Added System of Taxation with the introduction of the Tamil Nadu Value Added Tax Act, 2006 with effect from 01.01.2007. The retrospective operation given to Section 19(20) of the Act, initially incorporated with effect from 19.08.2010 by the Tamil Nadu Value Added Tax (Second Amendment) Act, 2010, now to operate from 1st January, 2007 is unreasonable and violative of Articles 14 and 19(1)(g) of the Constitution. It is a new levy for recovery and there are no exceptional circumstances justifying retrospective operation.

3.When the matter is taken up for consideration, the learned counsel for the petitioner had submitted that the Hon'ble Supreme Court by Judgment dated 05.08.2016 in the case of ***JAYAM & Co. v. ASSISTANT COMMISSIONER*** reported in ***96 VST 1***, while upholding the vires of Section 19(20) of the Act, has set aside and struck down the amendment Act 22 of 2010, whereby the amendment was given retrospective effect from January, 2007. Further, the learned counsel for the petitioner by inviting the attention of this Court to the copy of the Circular issued by the Commissioner of Commercial Taxes, dated 04.11.2013 has submitted that in the said Circular, the Commissioner of Commercial Taxes, has listed the three steps to be followed for the application of Section 19(20) of the Act, which reads as follows:

(1)Identification of cases in which huge ITC is accumulated on account of lesser sale price than the purchase price.

(2)The above facts have to be ensured by verifying the purchase and sale price per unit.

(3)If the above two things are found in a business concern, the quantum of ITC which exceeds the output tax shall be recovered.

4.Thus, the learned counsel for the petitioner submitted that from the above Circular, it is clear that the reversal of input tax credit under Section 19(20) of the Act comes into operation only when there is accumulation of input tax credit on account of sale price being lesser than the purchase price. In fact, the Division Bench of this Court, in W.A.(MD)Nos.1038 to 1040 of 2015, has directed the authorities to apply the above Circular issued by the Commissioner of Commercial Taxes and grant relief to the assessee. Thus, the learned counsel for the petitioner relying upon the Judgement of Hon'ble Supreme Court, dated 05.08.2016 in the case of ***JAYAM & Co. v. ASSISTANT COMMISSIONER*** as well as the Circular issued by the Commissioner of Commercial Taxes Department, dated 04.11.2013 and the Judgment of the Division Bench of this Court in W.A.(MD)Nos.1038 to 1040 of 2015, has sought for a suitable order.

5.By virtue of Judgment of the Hon'ble Supreme Court in the case of ***JAYAM & Co. v. ASSISTANT COMMISSIONER,*** Rule 19(20) of the said Rules, cannot be on retrospective effect and it has to be applied prospectively. Hence, the respondents shall take note of the Judgement of Hon'ble Supreme Court as well as the Circular issued by the Commissioner of Commercial Taxes Department, dated 04.11.2013.

6.With the above observations, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

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To

1. The Secretary,
   Commercial Taxes and Registration Department,
   Fort St. George,Chennai - 600 009.

2. The Assistant Commissioner (CT),
   Tuticorin-III,Tuticorin.

3. The Commercial Tax Officer – I,
   Virudhunagar Assessment Circle,
   Virudhunagar.

+1 cc to Mr.S.Raja Jeyachandra Paul, Advocate in SR.No.5380
+1 cc to The Special Government Pleader in SR.No.5670

CSL/SKN/RSK/14.3.17-4p-6C

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