IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.11.2018
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THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.4780 and 4781 of 2011
and M.P.No.2 & 2 of 2011

Jinendra Jewellers
Rep. by its Partner
Mr.M.Mahaveer Chand ... Petitioner in both W.Ps.

Vs.

1. The Assistant Commissioner (CT),
Moor Market (North) Assessment Circle,
No.191, N.S.C. Bose Road, Chennai - 1.

2. The Commissioner of Commercial Taxes
"Ezhilagam", Chepauk,
Chennai - 600 005.

3. The State of Tamil Nadu
Rep. by the Secretary to Government,
Commercial Taxes and Registration B(1) Dept.,
Fort St. George, Chennai 600 009.
... Respondents in both W.Ps.

Prayer in both Writ Petitions:
Writ petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the records on the files of the first respondent in TIN. 33820380317/2006-07 and 2007-2008 dated 24.12.2010 and quash the same in so far as denial of ITC under Section 19(2) (ii) of TNVAT Act, 2006.

For Petitioner : Ms.C.Rekha Kumari
For Respondents : Ms.G.Dhanamadhuri, G.A.(Tax)
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O R D E R

Learned counsel for the petitioner submits that the petitioner after purchasing raw materials such as gold bullion from the registered dealers, within the State of Tamilnadu, it is being sent outside the State of Tamil Nadu for conversion to the job workers viz., Goldsmith in other State and receive back the finished goods i.e. jewellery to Chennai for sale within the State of Tamilnadu. The petitioner is discharging tax on the sale of jewellary which are made to registered dealers inside the State and availed tax credit to the extent of tax paid on the purchase of bullion. Based on the audit report dated 30.4.2009 of the Enforcement Wing, first respondent placing reliance on Section 19(2) (ii) of the Tamil Nadu Value Added Tax Act, 2006, stated that input tax credit cannot be allowed since the manufacturing activity took place outside the State and not within the State. The denial of ITC on purchase of bullion to the petitioner on mere ground that it was sent for conversion to other States is contrary to law.

2. Learned counsel for the petitioner relied on the decision of the Division Bench of this Court in PATINA GOLD ORNAMENTS PVT. LTD. VS. ASSISTANT COMMISSIONER (CT), PARK ROAD CIRCLE, ERODE AND ANOTHER [W.P.No.6377 of 2010, dated 22.9.2017] to contend that Section 19(2) (ii) of the Act violates Article 304(a) of the Constitution of India, for the reason that they seek to deny input tax credit. On the basis of the manufacturing unit outside the State which results in discrimination against those who have their manufacturing unit located outside the State of Tamilnadu.

3 The learned Government Advocate (Tax) appearing for the respondents would submit that the aforesaid judgment will not apply to the facts of the present case and the assessing authority shall decide the petitioner's case on the basis of facts. Therefore, the writ petition is liable to be dismissed.

4 Heard the learned counsel for the petitioner, learned Government Advocate (Tax) for the respondents and perused the materials available on record.

5 The provisions of the said Act is challenged before the Division Bench of this Court in PATINA GOLD ORNAMENTS PVT. LTD. CASE [CITED SUPRA], wherein the Division Bench of this Court, referring to the various decisions of the Hon'ble Supreme Court, while declaring Section 19(2) (ii) of the Act, 2006 bad in law and invalid to the extent that it denies ITC in respect of those units which despatch tan suffered raw materials, for concession into final product, held as under:

> "29.1 A bare perusal of the aforesaid extract would show that ITC availed of need not be reversed merely because goods purchased are sent temporarily outside the State for the purpose of job-work. Therefore, having regard to the foregoing discussion, we are of the view that section 19(2) (ii) of the 2006 Act is invalid to the extent that it denies availment of ITC in respect of those units which despatch tax suffered raw materials, i.e., bullion/worn-out

> jewellary for conversion into final product (i.e. jewellary) outside the State which upon conversion are received back and sold within the State of Tamil Nadu. Thus, according to us, the mere fact that the manufacturing unit is located outside the State of Tamil Nadu cannot be the basis, for denial of ITC, under section 19(1) of the 2006 Act. Clause (ii) of sub-section (2) of Section 19 of the 2006 Act is thus, declared bad in law.
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> For the very same reason, we also hold that the respondents cannot retain ITC on goods purchased within the State, by invoking provision of section 19(4) of the 2006 Act to the extent of rate of tax provided therein, i.e. three percent (which was the rate provided therein at the relevant point of time), as that would make the relief inefficacious since the subject goods, i.e. bullion/worn-out jewellary on which tax credit was sought by the writ petitioner was imposed at the rate of one per cent."

The aforesaid judgment squarely applies to the facts of the present case. Therefore, the impugned order, passed by the first respondent is liable to be set aside.

6. In the facts and circumstances of the case, the Division Bench judgment cited supra, is squarely apply to the present case. Therefore, the impugned orders, dated 24.12.2010 for the assessment years 2006-07 and 2007-08 passed by the first respondent are quashed and remitted to the first respondent to consider afresh in the light of the Division Bench judgment (cited supra) and pass appropriate orders, as expeditiously as possible, after providing opportunity to the parties concerned, in accordance with the provisions of the Act.

The Writ petitions are allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/--
Assistant Registrar(CS iv)

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Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT),
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N.S.C.Bose Road, Chennai-1.

2. The Commissioner of Commercial Taxes
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3. The Secretary to Government,
State of Tamil Nadu,
Commercial Taxes and Registration B(1) Dept.,
Fort St. George, Chennai 600 009

+1cc to Ms.C.Rekha Kumari, Advocate SR.No. 87912
+1 CC TO GOVERNMENT PLEADER SR.NO. 82323

W.P.No.4780 and 4781 of 2011
and M.P.No.2 and 2 of 2011

ASK(08/01/2019)