IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2018

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.7563 to 7566 of 2010
and
M.P.Nos.1 to 1 of 2010

M/s.AVR Swarnamahal
rep. by its Partner ... Petitioner in all the writ petitions

Vs

1.The State of Tamil Nadu,
represented by the Secretary to Government,
Commercial Taxes and Registration B(1) Department,
Fort St. George, Chennai - 600 009.

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

3.The Assistant Commissioner (CT)
Arisipalayam Assessment Circle,
Salem. ... Respondents in all the writ petitions

WP.No.7563 of 2010: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration declaring that Section 19(2)(ii) of the Tamil Nadu Value Added Tax Act, 2006 as discriminatory and violative of Articles 14, 301 and 304 (a) of the Constitution of India, not saved by Presidential Assent under Article 304(b) of the Constitution of India.
WP.Nos.7564 to 7566 of 2010: Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned proceedings of the third respondent in TIN Nos. 33352843260/06-07, 33352843260/07-08 and 33352843260/08-09 respectively dated 05.04.2010 and quash the same.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.Hariharan, AGP

COMMON ORDER

While WP.No.7563 of 2010 has been filed by the petitioner to declare Section 19(2)(ii) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter shortly referred to as "the TNVAT Act") as discriminatory and violative of Articles 14, 301 and 304(a) of the Constitution of India, WP.Nos.7564 to 7566 of 2010 have been filed to quash the revised notice dated 05.04.2010 issued by the third respondent, relating to the assessment years 2006-07, 2007-08 and 2008-09 respectively.

2.When the matters were taken up for consideration, the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondents submitted that the issue involved herein is squarely covered by the decision of a Division Bench of this Court in the case of Patina Gold Ornaments Pvt. Limited v. Assistant Commissioner (CT), Park Road Circle, Erode and another [(2018) 50 GSTR 114 (Mad)], wherein, the Division Bench, after analysing the various decisions of the Supreme Court and upon perusal of the relevant provisions of law, ultimately held as under:

> "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 jewellery for conversion into final product (i.e., jewellery) 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.
>
> 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 per cent. (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 jewellery on which tax credit was sought by the writ petitioner was imposed at the rate of one per cent.
>
> The writ petition is, thus, allowed in the aforesaid terms, leaving parties to bear their own costs."

3.Following the same, all the writ petitions stand allowed accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rk

To

1.The Secretary to Government,
Commercial Taxes and Registration B(1) Department,
Fort St. George, Chennai - 600 009.

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

3.The Assistant Commissioner (CT)
Arisipalayam Assessment Circle,
Salem.

+1cc to Mr.P.Rajkumar Advocate Sr.45524
+1cc to the Special Government Pleader Sr.46230

W.P.Nos.7563 to 7566 of 2010

kk[co]
srg 31/07/2018