IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.07.2018
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.6932 and 6933 of 2010
and
M.P.Nos.1 and 1 of 2010

M/s.Kumbakonam Silver Shop
rep. by its Partner
No.364, Bazaar Street,
Salem

... Petitioner in both 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) (FAC)
Salem Town West Circle,
Salem.

... Respondents in both the writ petitions

WP.No.6932 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.No.6933 of 2010: Writ Petition 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 No.33502820431/09-10 dated 05.03.2010 and quash the same.

For Petitioner : Mr.P.Rajkumar
For Respondents : Mr.Hariharan, AGP

COMMON ORDER

While WP.No.6932 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.No.6933 of 2010 has been filed to quash the notice issued by the third respondent, whereby, the petitioner was directed to pay a sum of Rs.5,61,564/- on the ground that they have wrongly availed Input Tax Credit under Section 19(2)(ii) of the TNVAT Act.

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, both the writ petitions stand allowed accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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) (FAC)
Salem Town West Circle,
Salem.

+1cc to Mr.P.Raj Kumar, Advocate, S.R.No.45521

+1cc to the Spl Government Pleader, S.R.No.45398

W.P.Nos.6932 and 6933 of 2010

SPD(CO)
GSP(25/07/2018)