IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.03.2018

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY

W.P.No.2972 of 2009
and M.P.No.2 of 2009

M/s.Sri Laxmi Narasimma Spinning Mills (P) Ltd.,
rep by its Managing Director R.Palanisamy
465/2, Anumanthapuram Road,
Olapalayam PO,
Vellakovil, Erode District. .. Petitioner

Vs.

The Assistant Commissioner (CT),
Kangeyam. .. Respondent

Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari calling for the records of the respondent in his proceedings in TIN/33893083232/2007-08 dated 22.12.2008 and to quash the same.

For Petitioner : Mrs.R.Hemalatha

For Respondent : Mr.M.Hariharan,
Additional Government Pleader (Tax)

O R D E R

Heard Mrs.R.Hemalatha, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader (Tax) for the respondent.

2.The petitioner has filed the above Writ Petitions to issue writs of Certiorari calling for the records of the respondent dated 22.12.2008 for the assessment year 2007-08 and to quash the same.

3.When the matter was taken up for hearing, Mrs.R.Hemalatha, learned counsel for the petitioner fairly submitted that the issue involved in the present Writ Petition is already decided in the judgment reported in 2013 (5) CTC 63 [USA Agencies, rep by its Proprietrix, Attur Town, Salem District Vs. The Commercial Tax Officer, Attur (Rural) Assessment Circle, Attur] wherein the Division Bench of this Court held as follows:

"...

78.On behalf of the petitioners, it was submitted that the impugned provision does not take into account the commercial realities as in the cases of Modvat or Cenvat Credit Rules with the in-built flexibility and therefore, Section 19(11) is to be held as directory and not mandatory. As discussed earlier, the Legislature consciously prescribed a time frame for availment of "Input Tax Credit" accrued before the end of the financial year or 90 days from the date of purchase, whichever is later. Section 19 is a pre-condition for availment of "Input Tax Credit". When Section 19(11) is a pre-condition for availing Input Tax Credit, it is to be strictly complied with and the petitioners cannot contend that there ought to have been flexibility in the time frame for availing "Input Tax Credit".

...

82.The Legislature consciously enacted Section 19 (11) of Tamil Nadu VAT Act with avowed object of incorporating the time frame for availing Input Tax Credit before the end of financial year or ninety days from the date of purchase whichever is later. The provision is for safeguarding the interest of the revenue and to prevent the cascading effect of tax burden on the ultimate consumer. Therefore, we are of the view that Section 19(11) is mandatory and its contravention will result in forfeiture of the concession of availments of Input Tax Credit.

83.Value Added Tax structure has the ultimate goal of augmenting the revenue by making the procedure simple and more transparent. Legislature in its wisdom mandated time frame for availment of Input Tax Credit accrued on purchases before the end of the financial year or ninety days from the date of purchase whichever is later. Section 19(11), being mandatory, the time-frame stipulated for Input Tax Credit is to be strictly construed. Section 19(11) of Tamil Nadu VAT Act cannot be struck down as being either unreasonable or discriminatory. We do not find any merit in the challenge to the provision of Section 19 (11) of Tamil Nadu VAT Act."

4.The learned counsel for the petitioner submitted that in view of the judgment reported in 2013 (5) CTC 63 [USA Agencies, rep by its Proprietrix, Attur Town, Salem District Vs. The Commercial Tax Officer, Attur (Rural) Assessment Circle, Attur], the Writ Petition may be dismissed.

5.Having regard to the submissions made by the learned counsel on either side, following the ratio laid down in the judgment reported in 2013 (5) CTC 63 [USA Agencies, rep by its Proprietrix, Attur Town, Salem District Vs. The Commercial Tax Officer, Attur (Rural) Assessment Circle, Attur], the Writ Petition is dismissed. The petitioner is granted fifteen (15) days time to file an Appeal as against the impugned order dated 22.12.2008 before the Appellate Authority. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

va

To

The Assistant Commissioner (CT),
Kangeyam.

+1 cc to Mrs.R.hemalatha Advocate sr 16596
+1 cc to Special Government Pleader Taxes sr 16659

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