

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.43440 and 43441 of 2016
4648 and 4649 of 2017 and 18519 of 2017
and W.M.P.Nos.37303 and 37304 of 2016
and 4900 to 4902 of 2017 and 20084 of 2017

Orders reserved on 02.07.2018	Orders pronounced on 17.07.2018
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W.P.Nos.43440 and 43441 of 2016:-

MRF Ltd., Rep. by its
General Manager - Sales Tax,
Mr.Swarup Kumar Patnaik,
No.124, Greams Road,
Chennai-600 006. Petitioner

-vs-

Deputy Commissioner (CT) - III,
Large Taxpayers Unit,
Durga Towers, No.34,
Marshal Road, 5th Floor,
Chennai-600 008. Respondent

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the respondent in TIN : 33590540639/2013-14, 2014-15 respectively and consequential demand made in accompanying Form O and the penalty levied vide accompanying Form RR dated 01.11.2016 and quash the same.

W.P.Nos.4648, 4649 and 18519 of 2017:-

MRF Ltd., Rep. by its
General Manager - Sales Tax,
Mr.Swarup Kumar Patnaik,
No.124, Greams Road,
Chennai-600 006. Petitioner

-vs-

Joint Commissioner (CT),
Large Taxpayers Unit,
Durga Towers, No.34,
Marshal Road, 5th Floor,
Chennai-600 008. Respondent

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the respondent in Rc.No.3400/2016/A4 dated 13.02.2017 and RP.No.13 of 2014 dated 25.06.2014 and RP.No.56/2016 dated 19.05.2017 respectively, and quash the same.

For Petitioner : Mr.M.V.Swaroop
(in all W.Ps.)

For Respondent : Mrs.Narmadha Sampath,
(in all W.Ps.) Additional Advocate General
assisted by Mr.V.Hari Babu,
Additional Government Pleader

COMMON ORDER

The prayer sought for in all these writ petitions is identical in the sense that the petitioner has challenged the order passed by the Joint Commissioner (CT), Large Taxpayers Unit in exercise of his revisional powers under Section 54 of the Tamil Nadu Value Added tax Act, 2006 (hereinafter referred to as "the TNVAT Act").

2.The petitioner in all these petitions is M/s.MRF Limited (hereinafter referred to as "the assessee"). Since the challenge to the impugned orders is on identical grounds, the writ petitions were heard together and with the consent of the parties, Writ Petition No.4648 of 2017 is taken as the lead case and the facts set out therein are taken up for consideration to decide the writ petitions.

3.The assessee is a manufacturer of automobile tyres and tubes and allied products in the State of Tamil Nadu. They also have units in other States and Union Territories in the Country. During the course of its business, the assessee purchased requisite raw-materials either from local registered dealers or by way of import or by way of stock transfer. The assessee is registered as a dealer on the file of the respondent, Large Taxpayers Unit under the provisions of the TNVAT Act and Central Sales Tax Act, 1956 (hereinafter referred to as "the CST Act"). The assessee purchases various capital goods to be used in its business by paying applicable VAT on the same. The assessee relies upon Section 19(3) of the TNVAT Act for claiming input tax credit on the VAT paid in respect of the capital goods.

4.It is the assessee's case that in terms of Section 19 (3) (b) of the TNVAT Act, a dealer can utilise the input tax credit on capital goods over a period of three years from the

date of commencement of commercial production as may be prescribed. In this regard, reference is made to Rule 10(4) (b) of the TNVAT Rules, 2007, which prescribes the manner in which credit may be utilised, which states that the dealer may utilise up to 50% of the credit in the financial year in which commercial production begins and the remaining within three years of commencing commercial production.

5. In the return filed under the TNVAT Act for the month of June 2013, the assessee availed input tax credit of Rs.8,00,24,079/- on capital goods. The assessee's Assessing Officer, viz., Deputy Commissioner (CT)-III, Large Taxpayers Unit, determined as Rs.7,93,44,106/- of the total input tax credit availed on capital goods was related to the years 2011-12 and 2012-13 and therefore, vide order dated 10.09.2013, disallowed the input tax credit on capital goods to the extent of Rs.7,93,44,106/- on the ground that the claim was made after the expiry of the time stipulated in Section 19(11) of the TNVAT Act, which states that input tax has to be claimed before the end of the financial year or before 90 days from the date of purchase, whichever is later.

6. Being aggrieved by the said order, the assessee filed revision petition before the respondent, who has confirmed the order passed by the Assessing Officer / Joint Commissioner (CT), Large Taxpayers Unit, vide order dated 25.06.2014, primarily on the ground that Rule 10(4)(a) of the TNVAT Rules relates to the eligibility for deduction of input tax credit already claimed and not related to the actual claim of input tax credit itself. Further, the manner in which the input tax credit on capital goods has to be claimed under Section 19(3) (a) of the TNVAT Act is as prescribed in Sections 19(1), 19(2) and 19(11) of the TNVAT Act. The rectification petition filed by the assessee under Section 84 of the TNVAT Act was rejected as 'not maintainable' vide order dated 13.02.2017. The orders passed by the respondents viz., Joint Commissioner (CT), dated 25.06.2014 and Deputy Commissioner (CT)-III, dated 13.02.2017 are impugned in these writ petitions.

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7. Mr. M. V. Swaroop, learned counsel for the petitioner submitted that Section 19 of the TNVAT Act deals with conditions / requirements to be complied with respect to the allowance, claim and availment / utilisation of input tax credit under the Act. In terms of Section 19(11) of the TNVAT Act, there shall be input tax credit of the amount of tax paid under the Act, whereas Section 19(2) of the TNVAT Act deals with conditions that are to be satisfied for the allowance of input tax credit under the Act. It is the submission that

Section 19(11) is a general provision, which deals with the time limit for claiming input tax credit that is allowed as per the Act wherein it states that the credit must be claimed within the financial year or within ninety days from the date of taxable purchase, whichever is later. It is submitted that Section 19(11) of the TNVAT Act does not apply to capital goods that are covered by a different provision in Section 19(3) of the TNVAT Act altogether.

8. It is submitted that Section 19(3)(b) of the TNVAT Act states that deduction of such input tax credit shall be allowed only after the commencement of commercial production and over a period of three years in the manner as may be prescribed and after the expiry of three years, the unavailed input tax credit shall stand lapsed to Government. Further, Section 19(3) of the TNVAT Act gives the Government the power to make Rules in respect of input tax credit and the Rule being Rule 10(4)(a) of the TNVAT Rules, which clearly indicates that the intent of the legislature with regard to the claim of input tax credit qua capital goods is to be exclusively governed by Section 19(3) read with Rule 10(4) and not any other provision. In terms of the Rules, with respect to capital goods, input tax credit shall be allowed only upon commencement of commercial production and the time frame given to intimate such commencement of production is thirty days. It is stated that the petitioner has duly intimated the date of commencement of commercial production to the jurisdictional Assessing Officer within the stipulated thirty days vide their letter dated 01.02.2012. Therefore, it is submitted that denial of input tax credit vide the impugned order is invalid. It is further submitted that when there is an apparent contradiction between two provisions of an enactment, it must be harmoniously construed.

9. As far as the cases on hand are concerned, Section 19(11) of the TNVAT Act states that the input tax credit must be claimed within the financial year in which the input is purchased whereas, Section 19(3)(a) of the TNVAT Act states that for purchase of capital goods, input tax credit will be allowed over a period of three years and to ensure that both provisions are given effect to, reading harmoniously, it must be concluded that Section 19(3) of the Act applied in the case of input tax credit on capital goods and Section 19(11) applies in the case of all other goods. Thus, the impugned order based on Section 19(11) of the TNVAT Act is invalid.

10. Thus, by referring to Rules 10(4) and 10(4)(b) of the TNVAT Rules, it is submitted that the said Rules specifically refer to capital goods purchased within the State and the registered dealer shall be entitled to avail up to 50% of the input tax credit in the same financial year and the balance

credit before the end of the third final year, provided the said capital goods are in possession of the dealer. It is only after the expiry of the third financial year, the unavailed input tax credit, if any, shall lapse to the Government.

11. Further, by referring to the statutory form prescribed for filing a return in Form I in which there is no provision to report the claim of input tax credit qua capital goods in such form, the learned counsel referred to Rule 6(9) of the TNVAT Rules and submitted that every registered dealer, who claims input tax credit shall maintain an input tax adjustment account containing particulars, which are mentioned in Clauses (a) to (j) in Rule 6(9) of the TNVAT Rules.

12. Insofar as claims of input tax credit on capital goods are concerned, a separate procedure is prescribed under Rule 6(10) of the TNVAT Rules wherein the assessee is required to maintain the register with particulars mentioned in Clauses (a) to (f) in Rule 6(10) of the TNVAT Rules. It is submitted that Section 64 of the TNVAT Act deals with maintenance of up-to-date, true and correct accounts and records by dealers. The manner of maintaining such account is as per the prescription in Rule 6 of the TNVAT Rules.

13. Referring to Section 64(5)(b) of the TNVAT Act, it is submitted that the Officer conducting the audit shall on no account remove or cause to be removed any books of accounts, other documents or stocks. Therefore, the accounts, which are required to be maintained by the assessee in terms of Rule 6(9) of the TNVAT Rules are required to be kept in the place of business of the assessee and cannot be removed by the Assessing Officer.

14. The learned counsel invited the attention of this Court to Form I, which is the Form in which the assessee is required to file the value added tax monthly returns. It is submitted that in Section A of the Form, the details of total purchases and input tax credit are to be furnished. In the tabulated statement, in Section A Clause H deals with local purchases and eligible input tax credit on capital goods. Therefore, if the assessee is to disclose in Column H, then it is necessary that such credit should be adjusted as in Column I, the net input tax credit available for adjustment is arrived at.

15. It is submitted that the Assessing Officer admitted that intimation letter has been given by the assessee, yet by

held that the petitioner is not eligible for availing input tax credit. The respondent, while confirming the order, has once again relied upon Section 19(11) of the TNVAT Act, who disallowed the claim of input tax credit as being time barred. Thus, it is the submission of the learned counsel that Sections 19(3) and 19(6) read with Rules 10(4), 10(4)(b) and 6(10) of the TNVAT Rules are complete code by themselves exclusively for capital goods and reference to Section 19(11) of the TNVAT Act is incorrect.

16.The learned counsel referred to a clarification issued by the Commissioner of Commercial Taxes dated 09.08.2007 and submitted that it has been clarified that input tax credit on capital goods is allowed only after commencement of commercial production and over a period of three years and therefore, the impugned order, disallowing the claim for input tax credit is erroneous.

17.Mrs.Narmadha Sampath, learned Additional Advocate General assisted by Mr.V.Hari Babu, learned Additional Government Pleader submitted that Rule 10(4)(a) of the TNVAT Rules mandates that the registered dealer, who claims input tax credit on capital goods under Clause (b) of sub-Section 3 of Section 19, shall within 30 days from the date of commencement of commercial production, intimate the said date to the Assessing Authority under whose jurisdiction his principal place of business is situated. This intimation was not given by the assessee. It is submitted that in terms of Section 19(11) read with Rules 10(4)(a) and 10(4)(b) of the TNVAT Rules, a dealer, who claims input tax credit within the stipulated time and intimates the date of commencement of commercial production is only eligible for availing credit on capital goods and the time limit of "before the end of financial year or before ninety days from the date of purchase" is also applicable to capital goods as per Section 2(24) of the TNVAT Act. In terms of the above provision, the credit claimed by the petitioner on the purchase of capital goods for the years 2011-12 and 2012-13 was found to be in violation of the provisions of the TNVAT Act and accordingly, had been reversed.

18.It is further submitted that credit has to be claimed in the month of purchase, failing which, it can be claimed within the extended period as per Section 19(11) of the TNVAT Act and this outer limit cannot be stretched to three years as per Rule 10(4) of the TNVAT Rules. The time limit prescribed is solely for the purpose of deduction of input tax credit as laid down in Section 19(3)(b) of the TNVAT Act and therefore, it is explicit that the provision of Section 19(11) alone is applicable, as the provision prescribes time limit for claim of input tax credit and not Rule 10(4) as claimed by the assessee.

19.It is further submitted that the validity of Section 19(11) of the TNVAT Act was put to challenge in a batch of cases as being inconsistent with Section 3 and the general scheme of TNVAT Act and as being arbitrary and irrational infringing the rights of the dealers under Articles 14 and 19 (1)(g) of the Constitution of India. The challenge to the said provision was rejected in the case of USA Agencies vs. CTO in W.P.No.902 of 2009 and etc., batch dated 17.07.2013. Thus, the provision having been upheld, the claim made by the petitioner in the present writ petition does not merit consideration.

20.It is reiterated that the petitioner did not give their intimation as required to be done under Rules 10(4)(a) and 10(4)(b) of the TNVAT Rules and therefore, the respondent was right in rejecting the revision petition filed by the petitioner for the reasons assigned therein.

21.Heard the learned counsels for the parties and carefully perused the materials placed on record.

22.While testing the constitutional validity of Section 19(11) of the TNVAT Act, in USA Agencies (supra), the Division Bench pointed out that the essence of VAT is in providing set off for the tax paid earlier and this is given effect through the concept of input tax credit / rebate. VAT is based on value addition to goods and related value added tax liability of the dealer is calculated by deducting input tax credit from the tax collected on sales during the payment period. It was pointed out that the entire design of VAT with ITC is crucially based on documentation of tax invoice, cash memo or bill. There is a statutory obligation for every registered dealer having turnover of sales above the amounts specified to issue a tax invoice serially numbered containing the prescribed particulars. The basic simplification of VAT is that VAT liability will be self-assessed by the dealers themselves in terms of submissions on returns self-assessed upon setting off the credit limit. This has done away with the requirement of compulsory assessment as in the sales tax regime. The correctness of self-assessment is subject to check through the departmental audit. Thus, the net effect of the VAT system is to rationalise the tax burden and bring down in general the price level and bring in simplicity in the transparency in the tax structure thereby improving the tax compliance and eventually to ensure Revenue growth.

23.For deciding the controversy before this Court, the following statutory provisions are to be looked into and for easy reference, the same are quoted hereinbelow.

"Section 2(24) : "input tax" means the tax paid or payable under this Act by a registered dealer to another registered dealer on the purchase of goods including capital goods in the course of his business;

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Section 19. Input tax credit. - (1) There shall be input tax credit of the amount of tax paid or payable under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule :

Provided that the registered dealer, who claims input tax credit, shall establish that the tax due on such purchases has been paid by him in the manner prescribed.

Sec. 19(2) : Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of -

- (i) re-sale by him within the State; or
- (ii) use as input in manufacturing or processing of goods in the State; or
- (iii) use as containers, labels and other materials for packing of goods in the State; or
- (iv) use as capital goods in the manufacture of taxable goods.
- (v) sale in the course of inter-State trade or commerce falling under sub-section (1) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956).
- (vi) Agency transactions by the principal within the State in the manner as may be prescribed

Sec.19(3)(a) : Every registered dealer, in respect of purchases of capital goods wholly *[for use in the course of business of taxable goods], shall be allowed input tax credit in the manner prescribed.

Note : *The expression "for use in the manufacture of taxable goods" was substituted for the expression "wholly for use in the course of business" by Act 21/2007 - Gazette Extraordinary dated 08.06.2007 - Effective from 01.01.2007 (Retrospective.)

Sec. 19(3)(b) : Deduction of such input tax credit shall be allowed only after the commencement of commercial production and over a period of three years in the manner as may be prescribed. After the expiry of three years, the unavailed input tax credit shall lapse to Government.

Sec. 19(3)(c) : Input tax credit shall be allowed for the tax paid under section 12 of the Act, subject to clauses (a) and (b) of this sub-section.

Sec. 19(4) : Input tax credit shall be allowed on tax paid or payable in the State on the purchase of goods, in excess of *[three per cent of tax] four per cent of tax relating to such purchases subject to such conditions as may be prescribed,-

(i) for transfer to a place outside the State otherwise than by way of sale; or

(ii) for use in manufacture of other goods and transfer to a place outside the State, otherwise than by way of sale:

Provided that if a dealer has already availed input tax credit there shall be reversal of credit against such transfer.

Note: *The expression "three per cent of tax" was substituted for the expression "four per cent of tax" by Act 21/2007 - Gazette Extraordinary dated 08.06.2007 - Effective from 01.01.2007 (Retrospective.)

Sec. 19(5)(a) : No input tax credit shall be allowed in respect of sale of goods exempted under section 15

Sec. 19(5)(b) : No input tax credit shall be allowed on tax paid or payable in other States or Union Territories on goods brought into this State from outside the State.

Sec. 19(5)(c) : No input tax credit shall be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of inter-State trade or commerce falling under sub-section (2) of section 8 of the Central Sales Tax Act, 1956.

Sec. 19(6) : No input tax credit shall be allowed on purchase of capital goods, which are used exclusively in the manufacture of goods exempted under section 15: सत्यमेव जयते

*[Provided that on the purchase of capital goods which are used in the manufacture of excepted goods and taxable goods, input tax credit shall be allowed to the extent of its usage in the manufacture of taxable goods in the manner prescribed.]

Note : *Proviso was added by Act 21/2007 - Gazette Extraordinary dated 08.06.2007 - Effective from 01.01.2007 (Retrospective.)

Sec. 19(7) : No registered dealer shall be entitled to input tax credit in respect of-

Sec. 19(7)(a) : goods purchased and accounted for in business but utilised for the purpose of providing facility to the proprietor or partner or director including employees and in any residential accommodation; or

Sec. 19(7)(b) : purchase of all automobiles including commercial vehicles, two wheelers and three wheelers and spare parts for repair and maintenance thereof, unless the registered dealer is in the business of dealing in such automobiles or spare parts; or

Sec. 19(7)(c) : purchase of air-conditioning units unless the registered dealer is in the business of dealing in such units.

Sec. 19(8) : No input tax credit shall be allowed to any registered dealer in respect of any goods purchased by him for sale but given away by him by way of free sample or gift or goods consumed for personal use.

Sec. 19(9) : No input tax credit shall be available to a registered dealer for tax paid or payable at the time of purchase of goods, if such-

(i) goods are not sold because of any theft, loss or destruction, for any reason, including natural calamity. If a dealer has already availed input tax

credit against purchase of such goods, there shall be reversal of tax credit; or

(ii) inputs destroyed in fire accident or lost while in storage even before use in the manufacture of final products; or

(iii) inputs damaged in transit or destroyed at some intermediary stage of manufacture.

Sec. 19(10)(a) : The registered dealer shall not claim input tax credit until the dealer receives an original tax invoice duly filled, signed and issued by a registered dealer from whom the goods are purchased, containing such particulars, as may be prescribed, of the sale evidencing the amount of input tax.

Sec. 19(10)(b) : If the original tax invoice is lost, input tax credit shall be allowed only on the basis of duplicate or carbon copy of such tax invoice obtained from the selling dealer subject to such conditions as may be prescribed.

Sec. 19(11) : In case any registered dealer fails to claim input tax credit in respect of any transaction of taxable purchase in any month, he shall make the claim before the end of the financial year or before ninety days from the date of purchase, whichever is later.

inputs and when the finished goods become exempt, credit availed on inputs used therein, shall be reversed.

Sec. 19(13) : Where a registered dealer without entering into a transaction of sale, issues an invoice, bill or cash memorandum to another registered dealer, with the intention to defraud the Government revenue, the assessing authority shall, after making such enquiry as it thinks fit and giving a reasonable opportunity of being heard, deny the benefit of input tax credit to such registered dealer who has claimed input tax credit based on such invoice, bill or cash memorandum from such date.

Sec. 19(14) : Where the business of a registered dealer is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the registered dealer shall be entitled to transfer the input tax credit lying unutilized in his accounts to such sold, merged, amalgamated, leased or transferred concern. The transfer of input tax credit shall be allowed only if the stock of inputs, as such, or in process, or the capital goods is also transferred to the new ownership on which credit has been availed of are duly accounted for, subject to the satisfaction of the assessing authority.

Sec. 19(15) : Where a registered dealer has purchased any taxable goods from another dealer and has availed input tax credit in respect of the said goods and if the registration certificate of the selling dealer is cancelled by the appropriate registering authority, such registered dealer, who has availed by way of input tax credit, shall pay the amount availed on the date from which the order of cancellation of the registration certificate takes effect. Such dealer shall be liable to pay, in addition to the amount due, interest at the rate of *[two] per cent, per month, on the amount of tax so payable, for the period commencing from the date of claim of input tax credit by the dealer to the date of its payment.

Note : *Substituted by Act 13 of 2013 w.e.f. 29.05.2018

Sec. 19(16) : The input tax credit availed by any registered dealer shall be only provisional and the assessing authority is empowered to revoke the same

if it appears to the assessing authority to be incorrect, incomplete or otherwise not in order.

Sec. 19(17) : If the input tax credit determined by the assessing authority for a year exceeds tax liability for that year, the excess may be adjusted against any outstanding tax due from the dealer.

Sec. 19(18) : The excess input tax credit, if any, after adjustment under sub-section (17), shall be carried forward to the next year or refunded, in the manner, as may be prescribed.

Sec. 19(19) : Where any registered dealer has availed input tax credit and has goods remaining unsold at the time of stoppage or closure of business, the amount of tax availed shall be reversed on the date of stoppage or closure of such business and recovered.

Sec. 19(20) : Notwithstanding anything contained in this section, where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of the input tax credit over and above the output tax of those goods shall be reversed.

Note : Sec. 19(20) was inserted by Amendment Act 22/2010 and came into force on 19.08.2010. However, vide G.O.Ms.No.142 CT&R dt.19.08.2010 - Notn No.II(2)/CTR/527(b)/2010, the said sub-section has been given effect from 01.01.2007 (retrospective)

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Section 64. Maintenance of upto date, true and correct accounts and records by dealers. - (1) : Every person registered under this Act, every dealer liable to get himself registered under this Act, and every other dealer who is required so to do by the prescribed authority by notice served in the prescribed manner, shall keep and maintain an up-to- date, true and correct account showing full and complete particulars of his business and such other records as may be prescribed in any of the languages specified in the Eighth Schedule to the Constitution or in English, showing such particulars as may be prescribed and different particulars as may be prescribed for different classes of dealers.

Sec. 64(2) (a) : Every registered dealer shall keep at the place of business specified in the certificate of registration, books of account for the current year. If more than one place of

business in the State is specified in the certificate of registration, the books of account relating to each place of business for the current year shall be kept in the place of business concerned.

Sec. 64(2)(b) : Every registered dealer shall also ordinarily keep the books of account for the previous five years at such place or places as he may notify to the registering authority. If the registered dealer decides to change the place or places so notified, he shall, before effecting such change, notify the same to the registering authority.

Sec. 64(3) : Every registered dealer or person who moves goods in pursuance of a sale or purchase or otherwise from one place to another shall send along with the goods moved a bill of sale or delivery note or such other documents, as may be prescribed.

Sec. 64(4) : The Commissioner may order for audit of the business of any registered dealer by an officer not below the rank of *[Deputy] Commercial Tax Officer. For the purpose of this section, the selection of dealers for audit shall be made from amongst the dealers,-

Sec. 64(4)(a) : who have not filed returns within the prescribed period; or

Sec. 64(4)(b) : who have claimed exorbitant amount of refund of tax; or

Sec. 64(4)(c) : who have filed returns, but in the opinion of the Commissioner he is not satisfied with the correctness of any return filed, any claim made, deduction claimed or turnover disclosed in any such; or

Sec. 64(4)(d) : on the basis of any other criteria or on a random selection basis by the Commissioner ; or

Sec. 64(4)(e) : where detailed scrutiny of the case is necessary in the opinion of the Commissioner.

Sec. 64(5)(a) : During the course of the audit, the officer may require the dealer,-

(i) to afford him the necessary facility to inspect such books of accounts or other documents as he may require and which may be available at such place ;

(ii) to afford him the necessary facility to check or verify the stock which may be found therein; and

require as to any matter which may be useful for or relevant to any proceedings under this Act.

Sec. 64(5) (b) : The officer conducting the audit shall on no account remove or cause to be removed any books of accounts, other documents or stock.

Note : *The word "Deputy" was substituted for the word "Assistant" by Amendment Act 23 of 2011 w.e.f. 26.08.2010 (retrospective)

Rule 6. Accounts.-(1) Every registered dealer under the Act shall maintain true, correct and complete account in ink or electronic records in any of the languages specified in the Eighth Schedule to the Constitution of India or in English showing the goods produced or manufactured, bought, sold, delivered or supplied.

*["Provided that the dealer maintaining accounts in electronic form shall furnish the details to the registering authority in Form G-1:

Provided further that Form G-1 shall be furnished:-

(i) within thirty days on and from the 29th January 2016; or

(ii) within thirty days from the date of commencement of the business; or

(iii) within thirty days from the date of installation of the software application used to maintain accounts in electronic form, as the case may be;;

Provided also that the modification, deletion or addition of features of the Accounting or Enterprise Resource Planning software application, if any, shall be informed to the registering authority within thirty days from the date of such modification, deletion or addition.";

R.6(2) (a) : Every dealer shall maintain accounts showing purchases and sales.

R.6(2) (b) : The purchase account maintained by registered dealer shall contain the following particulars, namely -

(i) Invoice No. and date with seller's Taxpayer Identification Number;

(ii) Description of the goods purchased;

(iii) Value of purchase of exempted goods;

(iv) Value of the goods purchased from registered dealers with rate of tax;

(v) Value of the goods purchased from unregistered dealers with rate of tax;

(vi) Value of goods purchased from outside the State by issue of 'C' Forms as prescribed

under the Central Sales Tax (Registration

and Turnover) Rules, 1957;

- (vii) Value of goods purchased from outside the State without issue of 'C' Forms;
 - (viii) Value of goods purchased as specified in the Second Schedule;
 - (ix) Value of goods received on stock transfer from principal or head office situated outside the State for sale;
 - (x) Value of goods received on stock transfer from the principal within the State for sale;
 - (xi) Value of goods imported;
 - (xii) Value of goods returned;
 - (xiii) Total tax paid on local purchases;
- R.6(2)(c) : The sales or stock transfer account maintained by a registered dealer shall contain the following particulars, namely: -
- (i) Invoice No. and date with buyer's Taxpayer Identification Number;
 - (ii) Description of goods with quantity and value sold;
 - (iii) Sale value of exempted goods ;
 - (iv) Sale value realized out of stock received from the principal;
 - (v) Value of goods under zero rated sale out of taxable purchases;
 - (vi) Inter-State sales out of taxable purchases;
 - (vii) Sale value of goods specified in the Second Schedule;
 - (viii) Sale value of goods taxable at 1% with tax due;
 - (ix) Sale value of goods taxable at 4% with tax due;
 - (x) Sale value of goods taxable at 12.5% with tax due;
 - (xi) Sale value of goods sold in the course of inter-State sale against 'C' Form as prescribed under the Central Sales Tax (Registration and Turnover) Rules, 1957;
 - (xii) Sale value of goods sold in the course of inter-state sales without 'C' Form;
 - (xiii) Value of goods despatched to outside the State with Form F, as prescribed under Central Sales Tax (Registration and Turnover) Rules, 1957;
 - (xiv) Value of goods despatched to outside the State without Form F;
 - (xv) Value of goods returned;
 - (xvi) Total tax due;
 - (xvii) Tax payable:

Provided that the purchase accounts and sales accounts maintained by a dealer who opted to pay tax under sub-section (4) of section 3 or section 8

would suffice to contain the description, invoice number and the value of the goods purchased or sold.

R.6(3)(a) : Every registered dealer who manufactures or produces shall maintain a production-cum-stock account in Form H.

R.6(3)(b) : Every registered dealer who is a manufacturer or producer and purchases industrial inputs to use them in manufacture of taxable goods shall issue a certificate to the seller containing the details of his Taxpayer Identification Number, the details of goods purchased, details of goods manufactured and the name and address and Taxpayer Identification Number of the seller.

R.6(4) : Every registered dealer shall issue bill or invoice for each sale in triplicate showing the particulars of goods and quantity sold with its value, one copy of which must be retained for check by the officials of the Commercial Taxes Department. The invoice shall contain the rate and tax charged, the Taxpayer Identification Number of the seller and that of the buyer, in case the buyer is a registered dealer.

R.6(5) : Every registered dealer, who effects sales through agents shall maintain the accounts of goods consigned on each occasion, agent-wise showing the particulars of name and full address of the agent, nature and quantity of goods dispatched and details of the mode of dispatch and delivery note. He shall also maintain the originals of the written contract, if any, entered into between him and the agent, office copies of the authorisation letter, consignment notes or dispatch advices, as the case may be, sent to the agent in respect of the goods dispatched on each occasion.

R.6(6)(a) Every commission agent, broker, del credere agent, auctioneer or other mercantile agent, by whatever name called, shall maintain-

(i) a register showing the particulars of goods purchased or received for sale on each occasion, in respect of each principal separately;

(ii) the original or copy of the written contracts, if any, entered into between the agent and the principal;

(iii) copies of authorisations received by him to purchase or sell goods on behalf of each principal separately;

(iv) details of purchases or sales effected on behalf of each principal, showing the names of commodities, quantities and value of purchases or sales, and the tax due thereon;

(v) copies of pattiials, i.e., accounts rendered by the agent to the principal from time to time, showing the gross amount of the purchases or sales, deductions on account of commission and incidental charges and the net amount payable to the principal.

R.6(6)(b) Every such agent shall also furnish to the assessing authority concerned on or before the 20th of each month a statement in respect of each principal showing the turnover of purchases or sales effected on behalf of each principal in the previous month, containing the following particulars, namely:-

- (i) Name and full address of the principal;
- (ii) Name and value of goods bought or sold, liable at different rates of tax;
- (iii) Amount of input tax paid or payable on purchases on behalf of the principal;
- (iv) Amount of output tax due on the turnover.

R.6(7) : Every registered dealer, who is a manufacturer of jewellery, shall also maintain an order book showing the particulars of name and address of customer placing order, date of order, weight of bullion or old jewels received from the customer and date of delivery of finished jewels. He shall also maintain the particulars of weight of bullion added by him, if any, out of his own stock.

R.6(8) : Every registered dealer, who opted to pay tax at the rate specified in section 6 shall maintain accounts showing the details of contract with value and the payments received.

R.6(9) : Every registered dealer, who claims input tax credit shall maintain an input tax adjustment account with the following particulars, namely:-

- (a) Month ;
- (b) Input tax credit brought forward;
- (c) Input tax paid during the month;
 - (i) at 1%;
 - (ii) at 4%;
 - (iii) at 12.5%;
- (d) Reversal of input tax credit;
- (e) Total input tax credit;
- (f) Ineligible input tax credit;
- (g) Net input tax credit claimed;

- (h) Output tax;
- (i) Advance tax adjusted including entry tax;
- (j) Tax payable.

R.6(10) : Every registered dealer who claims input tax credit on capital goods shall maintain input tax adjustment account with the following particulars, namely:-

- (a) Month;
- (b) Date of commencement of commercial production;
- (c) Value of capital goods;
- (d) Rate of tax;
- (e) Tax paid;
- (f) Tax credit availed -
 - First year (not exceeding fifty per cent)
 - Second year
 - Third year.

*[R.6(11) : Accounts maintained by a registered dealer shall be preserved by him for a period of 1 [six] years from the date of assessment.]

*Note : Rule 6(11) was substituted by G.O.Ms.No.83, CT&R (B1), dated 18th June 2012 - Notn. No. SRO A - 18(a)/2012 - Gazette Extraordinary dated 19th June 2012 - effective from 19th June 2012, Prior to amendment, Rule 6(11) was as follows:

"R.6(11) Accounts maintained by a registered dealer shall be preserved by him for a period of five years from the date of assessment."

.....

Rule 10. Input tax credit - (1) The input tax credit that can be deducted from the output tax payable for any month or year shall be calculated by using the formula $(A + B) - (C + D)$ Where, A = Input tax credit carried forward from the previous month or year B = Input tax credit accrued during the month or year C = Input tax credit reversed during the month or year D = Input tax credit refunded during the month or year

R.10(2) : Every registered dealer who claims input tax credit under sub-section (1) of section 19 shall, produce the original tax invoice, in support of his claim of the input tax credit, containing the following details, namely:-

- (a) A consecutive serial number;
- (b) The date on which the invoice is issued;
- (c) The name, address and the Taxpayer Identification Number of the seller;
- (d) The name, address and the Taxpayer Identification Number of the buyer;
- (e) The description of the goods;

- (f) The quantity or volume of the goods;
- (g) The value of the goods;
- (h) The rate and amount of tax charged; and
- (i) The total value of the goods.

*["(2-A) Every registered dealer who claims input tax credit to the extent of the tax paid on purchases of taxable goods specified in the First Schedule to the Act from the other registered dealers inside the State, shall establish, whenever it is deemed necessary by the assessing authority, that the tax due on such purchase of goods has actually been remitted into the Government account.

(2-B) For the removal of doubts, it is hereby declared that, in no case, the amount of set-off or refund on any purchase of goods shall exceed the amount of tax in respect of the same goods, actually paid, if any, under the Act or any other Act referred to in section 88 of the Act, into the Government treasury except to the extent where purchase tax is payable by the claimant dealer on the purchase of the said goods effected by him.";]*

R.10(3)(a) : Every registered dealer, other than those who opt to pay tax under sub-section (4) of section 3 or section 6 or section 8, who claims input tax credit for other than capital goods purchased on or after 1st January 2006 held in stock on the commencement of the Act, shall submit a stock inventory statement in Form V in duplicate along with photostat copy of related purchase invoice or bill within thirty days from the date of commencement of the Act.

R.10(3)(b) : In the case of claim of input tax credit for other than capital goods purchased on or after 1st January 2006, held in stock on the commencement of the Act, --

R.10(3)(b)(i) : Where the purchase has been effected from first seller in the State with invoice or bill showing the tax separately, the claim for input tax credit shall be allowed to the extent of the tax paid by him on the value of such goods;

R.10(3)(b)(ii) : Where the purchases have been effected from second and subsequent dealer, the claim for input tax credit shall be restricted to the extent of the tax calculated on the purchase value of goods after deducting fifteen per cent and by using the tax fraction formula at the rate specified in the relevant Schedule under the said Act.

The tax fraction formula is,

$$t \times r / r + 100$$

where 't' is taxable sale inclusive of tax and
 'r' is the rate of tax applicable to the sale.

The dealer who claims input tax credit under this sub-rule shall furnish separate statement.

R.10(3)(b)(iii) : If the goods taxable under the Tamil Nadu General Sales Tax Act, 1959 are exempted under the Act, no input tax credit shall be allowed;

R.10(3)(b)(iv) : Where any tax is paid on any goods at the point of purchase by the dealer himself, such tax shall be eligible for claiming input tax credit;

R.10(3)(b)(v) : Every registered dealer shall avail the input tax credit immediately after the submission of stock inventory statement in Form V by him. Such claim shall be availed within six months from the date of commencement of the Act. The unavailed input tax credit, if any, after six months shall lapse to Government.

R.10(3)(b)(vi) : The assessing authority shall verify the claim made by the registered dealer with reference to documents filed along with the stock inventory in Form V and pass an order *[not later than seven months, from the date of commencement of the Act], determining the amount for which the registered dealer is entitled to input tax credit and reverse the claim, wherever necessary.

R.10(3)(b)(vii) : A registered dealer, who effects zero rated sale shall not be entitled for input tax credit relating to the stock held on the date of commencement of the Act.

R.10(3)(b)(viii) : The registered dealer shall ordinarily keep all original purchase invoices and connected documents relating to the claim for input tax credit under this rule, for a period of five years from the date of commencement of the Act and shall produce such documents to the authority for scrutiny, if required.

R.10(4)(a) : The registered dealer who claims input tax credit on capital goods under clause (b) of sub-section (3) of section 19, shall within thirty days from date of commencement of commercial production intimate the said date to the assessing authority under whose jurisdiction his principal place of business is situated.

R.10(4)(b) : In respect of capital goods purchased within the State, the registered dealer shall be entitled to avail up to fifty per cent of the input tax credit in the same financial year and the balance of the input tax credit before the end of the third financial year, provided the said capital goods are in possession of the dealer. After the expiry of the third financial year, the unavailed

input tax credit, if any, shall lapse to Government:

Provided that a registered dealer who makes purchase of parts and accessories for capital goods already purchased and use in manufacture of taxable goods is entitled to input tax credit relating to such goods in the month of purchase or thereafter.

R.10(4)(c) : The registered dealer shall not be entitled to claim input tax credit on the capital goods purchased prior to the commencement of the Act.

R.10(4)(d) : A registered dealer who manufactures goods, the sales of which are exempted under Section 15 of the Act is not entitled to input tax credit.

1[(e) A registered dealer who purchases and uses capital goods for the manufacture of both taxable and exempted goods shall be entitled to the input tax credit proportionately by applying the following formula.

Total Amount of Input tax paid on Sales turnover of taxable goods the the purchase of capital goods x and zero rated sales

Total sales turnover of taxable goods, zero rated sales and sales of exempted goods.]

R.10(5) : Every claim made under clause (b) of sub-section (10) of section 19 shall be presented before the assessing authority within thirty days from the date on which the original tax invoice is lost. It shall be accompanied by a duplicate or carbon copy of the original invoice. The assessing authority shall verify such claim and pass orders allowing input tax credit on the basis of duplicate or carbon copy of the original invoice or its rejection. When the claim is rejected, the assessing authority shall record his reasons for doing so and communicate to the dealer: Provided that no order prejudicial to the dealer shall be passed unless the said dealer is given an opportunity of being heard.

R.10(6)(a) : After availing input tax credit, if any, dealer who purchases goods returns the goods and gets credited the price and tax paid, the tax credit so availed shall be reversed, only when-

(i) the purchase was included in the return; and

(ii) the goods were returned within a period of six months from the date of purchase by him.

R.10(6) (b) : Where a dealer who sells goods after paying tax, receives back his goods, he may deduct such tax amounts paid from the tax payable in the returns of following months only when, -

(i) in respect of sales return, -

(A) the sale was included in the return and the tax paid;

(B) the goods were received back or returned within a period of six months from the date of sale;

(C) the price of the goods and the tax, if any, charged thereon were refunded in full to the buyer; and

(D) the credit note shall contain the date and serial number of the invoice on which the tax was originally charged and brought to account.

(ii) in respect of un fructified sale,-

(A) the sale was included in the return and tax paid; and

(B) the goods were received back within a period of thirty days from the date of sale.

(C) Wherever any credit notes are to be issued for discount or sales incentives by any dealer to another dealer after issuing tax invoice, the selling dealer shall pass a credit note without disturbing the tax component on the price in

the original tax invoice, so as to retain the quantum of input tax credit already claimed by the buying dealers as well as not to disturb the tax already paid by the selling dealer.

R.10(7)delete[(a) The principal is entitled for the input tax credit on those purchases which are transferred to the agent and sold by the agent on behalf of him.

R.10(7)(b) : The principal is entitled for the input tax credit for those purchases effected by the agent on behalf of him.]delete *[(a) The principal is entitled for the input tax credit corresponding to the goods which are transferred to the agent and sold by the agent on behalf of him and such input tax credit is adjustable to any liability of the principal.

(b) The principal is entitled for the input tax credit for those purchases effected by the agent on behalf of him with principal's Taxpayer Identification Number and on such purchases, the agent cannot claim input tax credit.";]*

R.10(7)(c) : The agent is not liable to pay tax on the sale of those goods which were received by him

from the principal.

R.10(8) (a) : The transferee claiming input tax credit under sub-section (14) of section 19 shall furnish the following details, namely:-

(i) Un availed credit available in the account of the transferor as certified by a Chartered Accountant or Cost Accountant;

(ii) Inventory of stock transferred with date;

(iii) Details of capital goods transferred;

and

(iv) Original tax invoices evidencing the payment of tax at the time of purchase.

R.19(8) (b) : The assessing authority shall verify the correctness of the details furnished under clause (a), allow or determine the amount of input tax credit transferred to the dealer or reject the claim:

Provided that no order rejecting the claim shall be passed unless the dealer is given an opportunity of being heard.

R.10(9) : Omitted[(a) Input tax credit on inter-state sales shall be allowed only if Form C prescribed in the Central Sales Tax (Registration and Turnover) Rules, 1957 is filed.]Omitted

R.10(9) (b) : Input tax credit on transfer of goods falling under section 6-A of the Central Sales Tax Act, 1956 shall be allowed only if Form F prescribed in the Central Sales Tax (Registration and Turnover) Rules, 1957 is filed.

R.10(10) (a) : In cases where the input tax paid in the month exceeds the output tax payable, the excess input credit shall be carried over to the next month.

R.10(10) (b) : In cases where the input tax credit as determined by the assessing authority for any registered dealer, for a year, exceeds the tax liability for that year, it may adjust the excess input tax credit against any arrears of tax or any other amount due from him. If there are no arrears under the Act or after the adjustment there is still an excess of input tax credit, the assessing authority shall serve a notice in Form P upon such dealer.

R.10(11) : The method of selection by the Commissioner referred to in sub-section (3) of section 22 shall be based on suitable stratified random sampling method and such selection shall not exceed twenty per cent of the cases assessed under sub-section (2) of section 22 and intimate the details of such selection to the assessing

authority for detailed scrutiny of accounts. Such list shall be exhibited on the Notice Board of the assessment circles and also in the website of the department. The assessing authority shall call for the accounts of those assesseees for detailed scrutiny and pass appropriate orders."

24. In USA Agencies, (supra) one of the arguments advanced by the assessee was that Section 3(2) of the TNVAT Act makes it mandatory for the dealer to pay tax on every sale and the dealer as of rights is entitled to claim input tax credit and therefore, the input tax credit provided under sub-Section (3) of Section 3 is not a concession, but is an indefeasible right. Therefore, it was the submission that this substantive right of claiming input tax credit cannot be curtailed by imposing restrictions like Section 19(11) of the TNVAT Act. This argument was rejected by the Division Bench in the said decision and it was held that the benefit of credit under the TNVAT Act is in the nature of concession given, which could be availed only in the manner and in the circumstances mentioned in Section 19.

25. The sheet anchor of the argument of Mr. M. V. Swaroop, is pitched on Sections 19(3) and 19(6) of the TNVAT Act read with Rules 10(4) and 10(4)(b) of the TNVAT Rules. Thus, it is submitted that capital goods have been treated differently and the statutory provisions are clear and Section 19(11) of the TNVAT Act would have no application. This submission is sought to be buttressed by referring to the statutory Form I return, the manner in which the input tax adjustment account is to be maintained in terms of Rule 6(10) of the TNVAT Rules and such accounts can be inspected in the place of business of the assessee and cannot be removed from such place in the light of the embargo contained in Section 64(5)(b) of the TNVAT Act.

26. Thus, the endeavour of Mr. M. V. Swaroop is to compartmentalize Section 19 of the TNVAT Act into more than one compartment and to carve out an exception so as to mean that they are exclusively meant for capital goods.

27. Mr. M. V. Swaroop, justified the action of the assessee by contending that three years period stipulated in Section 19(3)(b) of the TNVAT Act cannot be curtailed by invoking Section 19(11) of the TNVAT Act, which dealt with other goods, other capital goods. If we examine Section 19(3) of the TNVAT Act, it is evident that the said provision deals with the entitlement of the assessee for input tax credit. Clause (a) of Section 19(3) of the TNVAT Act states that every registered dealer in respect of purchases of capital goods wholly for the

use in the manufacture of taxable goods shall be allowed input tax credit in the manner prescribed.

28. Clause (b) of Section 19(3) of the TNVAT Act deals with how the deduction of such input tax credit, which may be allowed, as in the manner prescribed. It states that credit shall be allowed only after commencement of commercial production and over a period of three years in the manner as may be prescribed. After the expiry of three years, the unavailed input tax credit shall stand lapsed to the Government. The first requirement a dealer has to fulfill is in terms as stipulated in Rule 10(4) of the TNVAT Rules, to intimate about the claim of input tax credit on capital goods under Section 19(3)(b) within thirty days from the date of commencement of commercial production to his Assessing Officer. The Revenue states that this intimation was not given by the assessee.

29. The petitioner refers to a letter dated 01.02.2012 addressed to the Assessing Officer stating that their new plant at Naranamangalam Village and Post, Kunnam Taluk, Perambalur as commenced its commercial production and the first excise invoice has been raised on 27.01.2012. Curiously enough, the assessee is stated to have submitted this intimation to the office of the Joint Commissioner (CT), Large Taxpayers Unit, Chennai and obtained an endorsement in the letter delivery book. It is not known as to why the Commercial Taxes Department still continues such an archaic practice of permitting the dealers to obtain acknowledgements for the documents submitted by them by endorsing in a letter delivery book. This procedure gives room for manipulation as has been seen by this Court in several writ petitions. The Commercial Taxes Department always take a stand that e-commerce has been best implemented in their Department. If such is the case, one fails to understand as to why still the Department continues to give acknowledgements in letter delivery book and the reason behind such practice though deprecated by the Courts in several orders, the respondent having denied receipt of the intimation, the Court is not inclined to accept the stand of the assessee that they have intimated about their commercial production to their Assessing Officer.

30. Having come to such a conclusion, it may not be necessary for this Court to dwell further upon the challenge to the impugned orders, as the mandatory requirement to be fulfilled under Rule 10(4)(a) of the TNVAT Rules has not complied with. Yet Mr. M.V. Swaroop, learned counsel for the petitioner has advanced arguments with regard to the scheme of the Act and since the Department also are to be partially

Court proceeds to examine the other contentions advanced by him.

31.It is a submission of Mr.M.V.Swaroop that Sections 19 (3) and 19(6) read with Rule 10(4) of the TNVAT Rules are complete code by themselves and Section 19(11) would have no application to capital goods. In my considered view, this is an improper interpretation to be given to Section 19. No such intention has been expressed by the legislature. The Court cannot dissect a piece of legislation and render any finding. What is required to be examined is the language of the statute and the meaning it seeks to convey.

32.As pointed out earlier Section 19(3)(a) of the TNVAT Act speaks about the entitlement of an assessee for credit in respect of purchases of capital goods. The entitlement is as per the manner prescribed under the TNVAT Rules, viz., Rule 10 (4). Section 19(3)(b) of the TNVAT Act speaks about deduction of such input tax credit that may be allowed to be liable after the commencement of commercial production and over a period of three years in the manner as prescribed. After the expiry of three years, the unavailed credit shall lapse to the Government.

33.Rule 10(4)(b) of the TNVAT Rules prescribes the manner in which the credit shall be allowable after commencement of commercial production and over a period of three years. The Rule states a dealer shall be entitled to avail up to 50% of the credit in the same financial year and the balance credit before the end of the third financial year. Thus, a registered dealer, who has purchased capital goods shall be allowed input tax credit in terms of Rule 10(4) provided, he gives an intimation within 30 days from the date of commencement of commercial production and the tax leviable shall be not more than 50% in the same financial year and the balance before the end of the third financial year. Thus Section 19(3) read with Rule 10(4) of the TNVAT Rules speaks only about the entitlement.

34.Section 19(11) of the TNVAT Act deals with claims by registered dealer and stipulates an outer time limit for a claim to be made. The said provision states that if any registered dealer fails to claim input tax credit in respect of any transaction of taxable purchase in any month, he shall make the claim before the end of the financial year or before ninety days from the date of whichever is later.

35.Section 19(11) does not carve out any distinction between the type of goods purchased by the dealer on which there is a claim for input tax credit, but refers to any transaction of taxable purchase in any month. Thus, if a

dealer fails to claim input tax credit in respect of any transaction of taxable purchases, in any month, the legislature has given time to the dealer to make the claim before the end of the financial year or before 90 days from the date of purchase, whichever is later.

36. Section 2(24) of the TNVAT Act defines input tax to mean tax paid under the TNVAT Act in the manner prescribed by a registered dealer to another registered dealer on the purchase of goods including capital in the course of his business. Thus, the claim for input tax referred to in Section 19(11) includes the tax paid on the purchases of capital goods. Thus, Section 19(11) applies to all claims of input tax credit leviable / permissible under Section 19 of the Act. Any contrary interpretation given would result in misreading of the statutory provision and creating an artificial dichotomy within the provision, which is impermissible. In other words, Section 19 is a complete code by itself and cannot be truncated as argued by Mr. M. V. Swaroop.

37. In *USA Agencies (supra)*, it was held that Section 19 is a substantive provision under which upon a registered dealer making a claim for input tax credit after establishing that tax due on purchases has been paid by him in the manner prescribed, such claim for tax credit should fall within the scope of various categories to qualify for the tax credit. It was pointed out that Section 19 qualifies the entitlement of input tax credit and does not deal with the machinery of assessment. More or less, similar argument was advanced before the Division Bench by submitting that Rule 7(9) of the TNVAT Rules permits rectification of errors in returns and filing of revised returns within the period of six months from the last date of relevant period to which the return relates and Section 19(11) provides other limitation for claiming input tax credit. And there cannot be two different limitation periods for claiming input tax credit. This submission was rejected and held to effectuate the provision of the Act and beneficial to the registered dealer.

38. It was further pointed out that the benefit of credit under the Act is in the nature of a concession given, which could be availed only in the manner and in the circumstances mentioned in Section 19. One more argument was that Section 19(11) cannot be mandatory and it could only be directory, though the word "shall" has been used. Applying the principles of interpretation, it was held that the test to ascertain whether the word "shall" used in Section 19(11) has to be examined upon the TNVAT Act and we should not go by the phraseology of the provision, but should consider the nature, its design and consequence, which would flow from it.

39.Mr.M.V.Swaroop, pointed out that in the Form I return, there is no provision to disclose the availment of input tax credit under Section 19(3) of the TNVAT Act and once, the amount is disclosed in Clause H of Section A1 of the Form I return, the adjustment is automatic while computing the net of input tax credit available. This contention does not merit consideration, in the light of the plain language of Section 19(11) of the Act, which provision has already been upheld. The argument that the petitioner has reflected the purchases in the input tax adjustment account maintained cannot make or extend the limitation prescribed under Section 19(11) of the TNVAT Act.

40.The prescription under Rule 6 of the TNVAT Rules is mandatory, which the dealer has to comply with. Therefore, such maintenance of input tax adjustment account can have no impact on the time limit prescribed in the statute for claiming input tax credit. Thus, the distinction, which has to be borne in mind is that Section 19(3) deals with entitlement and Section 19(11) deals with availment, which prescribes not only a procedure but also an outer time limit. Thus, the interpretation given by the respondent in the impugned order is perfectly valid and legal.

41.Mr.M.V.Swaroop, learned counsel, contended that in the present case, the Court is concerned with the interpretation of the phrase "any transaction of taxable purchase" appearing in Section 19(11) of the TNVAT Act, and whether the same applies to the purchase of capital goods.

42.Relying on the judgment of the Constitution Bench of the Hon'ble Supreme Court in Government of NCT of Delhi vs. Union of India in C.A.No.2358 of 2017 and etc., batch dated 04.07.2018, it is submitted that the Court was concerned with the interpretation of the term "any matter" appearing in the proviso to Article 239AA(4) of the Constitution.

43.It is submitted that majority judgment of the Supreme Court cites various judgments on the interpretation of the term "any" from paragraphs 225 to 231 for the proposition that merely because the term "any" is used, it does not mean that the following phrase must be given a wide interpretation.

44.It is submitted that in the said judgment, it has been further held that the word "any requirement" cannot include something, which could have been said more specifically. Thus, it is the argument of Mr.M.V.Swaroop, that "any transaction" in Section 19(11) of the TNVAT Act cannot include something that could have been said more specifically - especially when 'capital goods' have been specifically mentioned in various other parts of the Section.

45. It is further submitted that the Hon'ble Supreme Court

has held that the term "any" need not mean "every" and must be read contextually. Thus, it is submitted that input tax credit on purchase of regular inputs must form part of the monthly returns. Section 19(11) of the TNVAT Act states that if a dealer fails to claim input tax credit within that particular month, he may claim it within the end of the year, or within ninety days from the date of purchase. When read in that context, it becomes clear that the term "any transaction" must only include such transactions for which input tax credit must be claimed within the month of purchase. Since input tax credit on 'capital goods' may be claimed over a period of three years, in the manner prescribed in Rule 10(4)(a) and (b) read with Rule 6(10), the term "any transaction" in this provision should be restricted to transactions other than purchases of capital goods.

46. In the earlier part of the judgment, the Court has held that Section 19(11) of the TNVAT Act does not carve out any distinction between the type of goods purchased by the dealer of which there is a claim for input tax credit, but refers to "any transaction" of taxable purchase in any month. Further, it has been held that Section 19 of the TNVAT Act has to be read as a whole, and an artificial dichotomy cannot be read into the statute to state that Section 19(3) of the TNVAT Act is a stand alone provision and Section 19(11) of the TNVAT Act cannot impact the claim for input tax credit on capital goods under Section 19(3) of the TNVAT Act. This argument, if to be accepted, would amount to misreading of the statutory provision by creating an artificial dichotomy within the provisions, which is impermissible.

47. Thus, Section 19 of the TNVAT Act, being a complete code by itself, cannot be truncated in the manner sought to be done by the petitioner. Thus, in the considered view of this Court, the decision of the Constitution Bench of the Hon'ble Supreme Court in Government of NCT of Delhi (supra) does not apply to the facts and circumstances of the case.

48. In the result, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

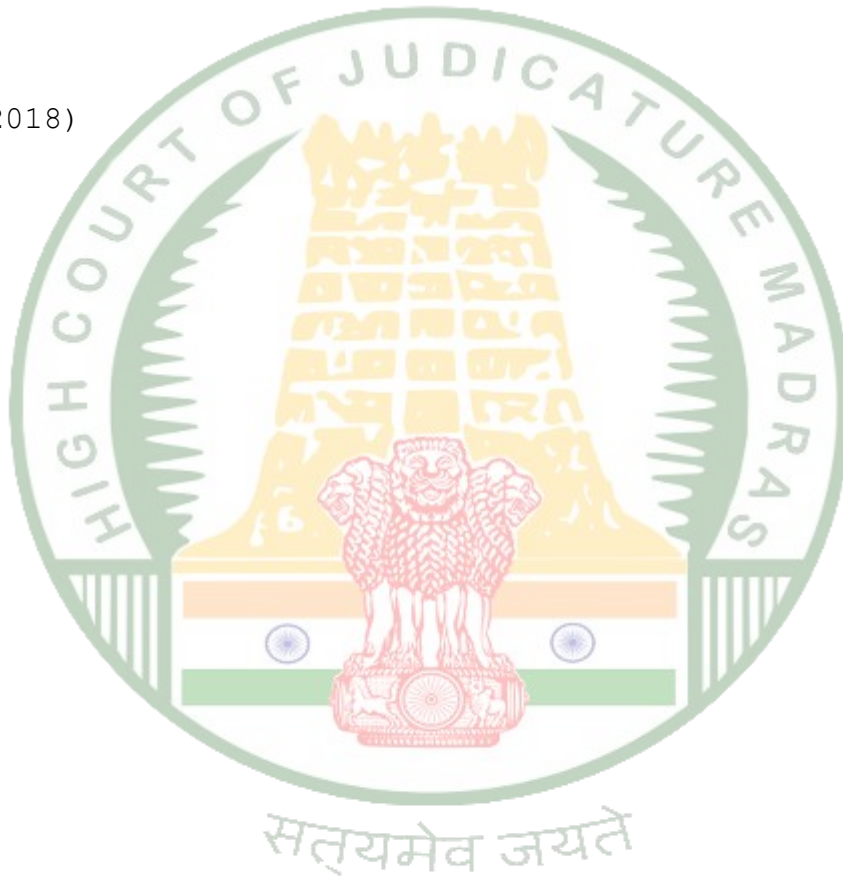
abr

The Deputy Commissioner (CT) - III,
Large Taxpayers Unit,
Durga Towers, No.34,
Marshal Road, 5th Floor,
Chennai-600 008.

+ 2 ccs to Mr. M.V. Swaroop, Advocate SR.47437
+ 1 cc to Mr. Specil Government Pleader Sr.67702

W.P.Nos.43440 and 43441 of 2016
4648 and 4649 of 2017 and 18519 of 2017

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