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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.11.2018
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.15457, 15458 and 15459 of 2018
and
W.M.P.(MD)Nos. 13923, 13924 and 13925 of 2018

M/s. High Energy Batteries (India) Ltd.,
represented by its Managing Director,
Gnana Bhaskara Agneeswara Pathanjali
Plot No.58, D.No.1/4, 3rd Cross,
Sundar Nagar,
Trichy-620 021. ... Petitioner in all WPs

Vs.

The Assistant Commissioner (CT)/FAC
Srirangam Assessment Circle. ... Respondent in all WPs

PRAYER in W.P.(MD)No.15457 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN: 33893520217/2012-13, quash the impugned assessment order dated 18.06.2018 passed therein.

PRAYER in W.P.(MD)No.15458 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN: 33893520217/2013-14, quash the impugned assessment order dated 18.06.2018 passed therein.

PRAYER in W.P.(MD)No.15459 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN: 33893520217/2014-15, quash the impugned assessment order dated 18.06.2018 passed therein.

For Petitioner : Mr.S.Raja Jeya Chandra Paul
For Respondent : Mr.Aayiram K.Selvakumar
Additional Government Pleader
(in all Writ Petitions)

COMMON ORDER

The petitioner is an assessee registered with the respondent. The petitioner had effected interstate sales in favour of Central Government Department (Ministry of Defence). In the case of interstate sale, the rate of tax payable by the petitioner would be 2%. But then, the assessee will have to make available the C-

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Form issued by the purchasing dealer. But when an interstate sale is effected in favour of a Government Department, such a C-Form declaration cannot be obtained. Therefore, in TNVAT Act, Section 19(5)(c) was incorporated providing for reversal of an input tax credit in such cases. The validity of the provision was challenged in a batch of writ petitions. The High Court sustained the provisions. Questioning the same, Civil appeal Nos.10560 to 10564 of 2018 were filed before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court even while dismissing the civil appeals and sustaining the provision, chose to read down the provision in the following terms:

> " *45.One argument of Mr.Bagaria, however, needs little deeper consideration. He has argued that the appellant represented in his case is making sales only to the State of Karnataka. In such a case, there cannot be any apprehension about evasion of tax.*
>
> *46.Section 2(15) defines the term 'dealer' and includes State Government as well by means of Explanation II which reads as under:*
>
> *"Explanation II: The Central Government or any State Government which, whether or not in the course of business, buy, sell, supply or distribute goods, directly or otherwise, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act."*
>
> *47.Thus, wherever the State Government buys, sells, supplies or distribute goods, it shall be deemed to be the dealer for the purposes of TNVAT Act. At the same time, TNVAT Act does not require registration by the State Government inasmuch as Section 38 which deals with registration of dealers explicitly provides, under sub-section(8) thereof, that this provision shall not apply to any State Government or Central Government. A conjoint reading of the aforesaid two provisions would show that when a sale is made to the Sate of Karnataka, it is made to a dealer but that dealer is under no obligation to get itself registered under the TNVAT Act. Because of this exemption, no State Government does that and since it is not a registered dealer, it would not be in a position to issue any Form C. But for that, the genuineness of sales made to a State Government cannot be doubted. This situation puts those deales who are making sales to the State Government in disadvantageous position, even when it is clear that there is no possibility of tax evasion as there cannot*

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be any such apprehension in case of sales to the State Government. We may point out here that benefit of ITC is given whenever sale is made to a dealer outside State of Tamil Nadu and the said dealer is a registered dealer.

48. Having regard to the above, we are of the opinion that the provisions of Section 19(5)(c) are to be read down by construing that those dealers who are making sales exclusively to the other State Governments (i.e. Outside the State of Tamil Nadu), the said States would be deemed as registered dealers for the purposes of availing benefits of ITC. Otherwise, in such a situation, it would be difficult to hold that test of reasonable classification is met in this limited context. It becomes unnecessary to deal with other contentions of Mr.Bagaria.

49.Result of the aforesaid discussion would be to uphold the judgment of the High Court with one rider, namely, that in those cases where a dealer makes sales exclusively to the other State Government(s), benefit of ITC would be allowed without insisting on the furnishing of Form 'C'. However, in order to avail this benefit, a certificate from said the State Government to whom the supplies are made would be obtained by the dealer claiming ITC and submitted to the VAT authorities.

50.As a consequence, we allow Civil Appeal arising out of SLP(Civil) No.9326 of 2015 to the extent indicated above and other appeals are dismissed with cost.”

2.In the present case, the interstate sale has been effected in favour of a Central Government Department. But in the operative portion of the Hon'ble Supreme Court order, the reference is only to the State Government and not to the Central Government. Thus, there is still an area of ambiguity. But then, I propose to rest my reasoning on an another ground. Rightly or wrongly, the writ petition filed by the petitioner herein is still pending. The interim stay granted by the Hon'ble Division Bench in M.P.(MD)No.1 of 2013 in W.P.(MD)No.12888 of 2013 is still holding good.

3.The respondent official, Ms.B.Vanithamani, Assistant Commissioner (ST), Srirangam Asst. circle, Srirangam, is present before this Court and the fact that the interim order still sustaining is not really in dispute.

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4.This Court had specifically restrained the respondent from reversing the ITC. When the order is still holding good, it is clearly not open to the respondent to reverse the ITC availed by the petitioner herein. Interestingly, even in the impugned order reversing the ITC the authority would make a specific reference to the interim order granted by the Hon'ble Division Bench.

5.Therefore, in as much as the orders impugned in these writ petitions are in contravention of the interim order given by the Hon'ble Division Bench in W.P.(MD)No.12888 of 2013, I have to necessarily set them aside.

6.Accordingly, the orders impugned in this writ petition is set aside and this writ petition is allowed. Ofcourse, it is open to the respondent to take further action in the matter after vacating the interim order made in the writ proceedings. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Assistant Commissioner (CT)/FAC
Srirangam Assessment Circle.

+1 cc To Mr.S.Raja Jeya Chandra Paul, ADVOCATE IN SR NO.96373
+1cc to Special Government Pleader Sr.No.96585

Pnn
MK/KK/SV/SAR 3/31.12.2018/4P/4C

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