IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition Nos.12057, 12058, 7646 and 7647 of 2015
and
M.P. Nos.1,1,1 and 1 of 2015

M/s.Meenakshi Industries
rep. By its Partner
Salil Bansal
S.R.No.9/2B, T.Pidaripattu Village
Thiruvannamalai Main Road,
Thirumangalam Post,
Villupuram Taluk. ..Petitioner in the above W.Ps

Vs.

The Assistant Commissioner of (CT)
Villpuram - II Assessment Circle,
Master Plan Complex
(Collector office complex)
Villupuram - 605 602. ...Respondent in the above W.Ps

W.P.No.12057 of 2015:

Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, calling for the records on the file of the respondent in TIN:33944702340/2011-12 dated 31.03.2015 and quash the same as illegal, contrary to provisions of TNVAT Act and discriminatory and violative of Articles 14, 301 and 304(a) of the Constitution of India.

W.P.No.12058 of 2015:

Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, calling for the records on the file of the respondent in CST.389639/2011-12 dated 02.03.2015 and quash the same as illegal, contrary to provisions of CST Act read with TNVAT Act and discriminatory and violative of Articles 14, 301 and 304(a) of the Constitution of India.

W.P.No.7646 of 2015:

Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, calling for the records on the file of the respondent in

TIN:33944702340/2012-13 dated 27.02.2015 and quash the same as illegal, contrary to provisions of TNVAT Act and discriminatory and violative of Articles 14, 301 and 304(a) of the Constitution of India.

W.P.No.7647 of 2015:

Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, calling for the records on the file of the respondent in CST.389639/2012-13 dated 27.02.2015 and quash the same as illegal, contrary to provisions of CST Act read with TNVAT Act and discriminatory and violative of Articles 14, 301 and 304(a) of the Constitution of India.

For Petitioner : Mr.Pramodkmar Chopda

For Respondents : Ms.G.Dhanamadhiri, Government Advocate

COMMON ORDER

Four Show Cause Notices are impugned in these Writ Petitions, two issued in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act') and two in terms of the provisions of the Central Sales Tax Act, 1956 (in short 'CST Act') for the period 2011-12 and 2012-13. A perusal of the impugned notices reveals that the Assessing Authority proposes to reverse Input Tax Credit invoking the provisions of Sections 19(2) and 19(5)(c) of the TNVAT Act.

2. The petitioner is engaged in the purchase and sale of old iron scrap, such as, sponge iron lumps, M.S. cut Sheet, Heavy melting scrap, M.S.Angles, TMT steel Rods and the like from registered dealers in Tamil Nadu. For the purposes of conversion, the petitioner, admittedly, sends the material to Puducherry and elsewhere outside the State of Tamil Nadu and receives the same back after conversion/value addition for sale domestically, i.e., within the State of Tamil Nadu. The turnover from sale of these goods are offered to tax in Tamil Nadu and the petitioner seeks set-off on Input Tax Credit (ITC) against the Output Tax liability. The set-off has been rejected on the ground that the provisions of Sections 19(2) and 19(5)(c) militate against such claim, in cases where the conversion has taken place outside the State of Tamil Nadu.

3. This very issue has come to be considered by a Division Bench of this Court in the case of Patina Gold Ornaments Pvt. Limited V. Assistant Commissioner of Commercial Taxes and another (Order dated 22.09.2017 in W.P.No.6377 of 2010). After considering an identical factual scenario in the context of a

dealer in jewellery who had also sent beaten up gold and bullion for conversion into jewellery to other States, such as Kerala, the Bench states at paragraph 29 to 31, as follows:

> '29. Similarly, the Circular issued by the State of Karnataka, Commercial Tax Department No.KNA.CR.311/2005-06, dated 09.06.2006, which, in fact, sets out answers to what are, perhaps, Frequently Asked Questions (FAQ), provides a clue in one of its answers to the situation at hand. For the sake of convenience, the relevant part of the Circular is extracted hereafter.
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> > 2. With regard to claim of input tax rebate on goods sent outside the State for job work, as the goods are temporarily sent outside the State, there is no need to reverse the input tax rebate availed and later claim input tax rebate after receipt of goods. 29.1. A bare perusal of the aforesaid extract would show that ITC availed of need not be reversed merely because goods purchased are sent temporarily outside the State for the purposes of job work.
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> 30. 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.
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> 31. 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., 3% (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 1%.'

4. No dispute is raised on facts by the revenue and the legal issue that arise in these Writ Petitions is thus covered in favour of the petitioner as regards the notices relating to

TNVAT Act for the period 2011-12 and 2012-13. There is also a ground of additional sales suppression that admittedly involves the appreciation of facts. I am thus not inclined to entertain this ground in a Writ Petition.

5. Learned counsel for the Revenue relies on the judgments of the Supreme Court in the case of Union of India and another V. Vicco Laboratories ((2007) 13 SCC 270) and Union of India and another V. Kunisetty Satyanarayana ((2006) 12 SCC 28) to urge that the Writ Petitions are pre-mature insofar as they only challenge show cause notices.

6. The Supreme Court in Vicco Laboratories (supra), at paragraph 31, points out that while normally the Writ Court should not interfere at the stage of issuance of show cause notice since parties get ample opportunity to put forth their contentions on merits and in accordance with law before the authorities in the course of proceedings, the said rule is not without exceptions. The exceptions carved out by the Court are i) the show cause notice being without jurisdiction and ii) an abuse of process of law.

7. In the present case, neither the show cause notice nor the counter filed raise any dispute on facts. What remains is thus only an adjudication of the legal issue, that is identical to that dealt with by the Division Bench in the case of Patina Gold Ornaments (supra).

8. Learned counsel for the Revenue states that a petition for Review of the above decision has been filed, under SR stage. However, there has been no progress till date. The present case would thus fall within the exception of bar of jurisdiction, as laid down by the Supreme Court in the case of Vicco Laboratories (supra).

9. For the aforesaid reasons, the show cause notices impugned, to the extent to which they relate to reversal of ITC, are quashed. Proceedings will continue as far as the issue of sales suppression is concerned and an order be passed within a period of four weeks from date of receipt of a copy of this order, after hearing the petitioner.

10. These Writ Petitions are allowed to the extent indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner of (CT)
Villpuram - II Assessment Circle,
Master Plan Complex
(Collector office complex)
Villupuram - 605 602.

+1 cc to M/s.T.Pramod Kumar Chopda,Advocate Sr.No. 95628
+1 cc to The Special Government Pleader(Taxes), SR.No.96162

AKM/14.02.2020/5P-4C /

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