IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case Revision Nos.31 to 35 of 2016
and
C.M.P.Nos.10886 to 10890 of 2016

Veeyel Enterprises,
New No.13/3, Trunk Road,
Nezarathpet, Poonamallee,
Chennai-600 123. ... Petitioner
In all Revisions

-vs-

The State of Tamil Nadu,
Rep., by The Assistant Commissioner (CT),
Sriperumbudur Circle,
Varadharajapuram,
Chennai-600 123. ... Respondent
In all Revisions

Tax Case Revisions filed under Section 60(1) of the Tamil Nadu Value Added Tax Act, 2006 to revise the orders of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) Chennai, dated 22.04.2016 passed in T.A.Nos.19 to 23 of 2015 for the assessment years 2007-08 to 2011-12 respectively and against the order of the Appellate Deputy Commissioner (CT), South Chennai - 6, dated 27.11.2014, made in AP No.80,78,81,82 and 83 of 2013 VAT-V and against the order of the Assistant Commissioner(CT), Sriperumbudur Assessment Circle, Varadarajapuram, dated 10.09.2013, made in TIN:33911660134/2007-08.

For Petitioner : Mr.R.Kumar
(In all Revisions)

For Respondent : Mr.Md.Shaffiq,
(In all Revisions) Special Government Pleader

COMMON ORDER

(Common Order of the Court was made by T.S.Sivagnanam, J.)

These tax case revisions have been filed by the assessee under Section 60(1) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act") challenging the orders passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) Chennai, dated 22.04.2016,in T.A.Nos.19 to 23 of 2015 for the assessment years 2007-08 to 2011-12 respectively.

2.These tax case revisions have been filed raising the following substantial questions of law:-

> "(i) Whether the Tribunal is correct in dismissing the appeal filed by the petitioner when Section 30 of the Act does not empower the Government to deny the benefit of input tax credit granted under section 19 of the Act?
>
> (ii) Whether the Tribunal is correct in dismissing the appeal filed by the petitioner when there is no specific amendment under section 19 of the Act empowers the Government to deny the benefit of input tax credit?
>
> (iii) Whether the Tribunal is correct in dismissing the appeal filed by the petitioner in the absence of power to restrict the benefit of input tax credit under section 19 of the Act?
>
> (iv) Whether the Tribunal is correct in dismissing the appeal filed by the petitioner even though the case of the petitioner is squarely covered by the Judgment of the Apex Court reported in 87 VST 190 (SC) - Commercial Tax Officer vs. A.Infrastructure Limited?
>
> (v) Whether the Tribunal is correct in dismissing the appeal filed by the petitioner when the case of the petitioner is falling under Section 19(5), (6), (7), (8) and (9) of the Act.
>
> (vi) Whether the Tribunal is correct in recording that the notification was not challenged by the petitioner or any other dealer and the notification is still in force. The petitioner filed appeal and exhausted the remedy and the Tribunal failed to consider the powers granted under Section 30 of the Act and the reason recorded for dismissing the appeal is not correct.
>
> (vii) Whether the Tribunal is correct in dismissing the appeal filed by the petitioner and confirmed the levy of penalty in the absence of claim of input tax credit by producing false bills by the petitioner?"

3.Heard Mr.R.Kumar, learned counsel for the petitioner and Mr.Md.Shaffiq, learned Special Government Pleader for the respondent.

4.The short issue involved in these revisions is whether the input tax credit availed by the assessee on the purchase of cement, which was used for the manufacture of RCC pipe can be curtailed, while they availed the benefit of a notification issued by the Government in G.O.Ms.No.79, Commercial Taxes and Registration (B2), dated 23.03.2007 whereby, the Government reduced the rate of tax payable by any dealer on the sale of certain goods under the TNVAT Act.

5.The assessee is a manufacturer of RCC pipes and they used cement for the purpose of manufacture. In terms of Part (C) of the First Schedule to the TNVAT Act, the RCC pipes are taxable at 12.5% with effect from 12.07.2007 and 14.5% with effect from 12.07.2011. The assessee claimed benefit of the notification in G.O.Ms.No.79, dated 23.03.2007. In the said notification, the Government reduced rate of tax in respect of 26 products to 4%. The relevant entry for the purpose of the case on hand is Entry No.12 of the notification, which reads as follows:-

> "Reduction In The Rate Of Tax
> Payable By Any Dealer On The Sale Of
> Certain Goods Under The Act
>
> No.II(1)/CTR/30(a-5)/2007(TNGG Extraordinary/ March 23, 2007)
> [G.O. Ms. No.79, Commercial Taxes and Registration (B2), 23rd March 2007]
>
> In exercise of the powers conferred by sub-section (1) of Section 30 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006), the Governor of Tamil Nadu hereby makes a reduction in the rate of tax payable by any dealer on the sale of following goods to four per cent under the Said Act:-
>
> ....
> ....
> 12.Jolleys door and window frames made of R.C.C. and R.C.C. pipes (without input tax credit on purchase of cement)
> ....
> ...."

6.As could be seen from the above notification, the same has been issued in exercise of powers conferred under sub-Section (1) of Section 30 of the TNVAT Act.

7.The assessee's case is that Section 30 of the TNVAT gives power to the Government to notify exemption or reduction of tax. Section 30(1) of the TNVAT Act states that the Government may, by notification, whether prospectively or retrospectively make an exemption, or reduction in rate, in respect of any tax payable under this Act. Therefore, it is the submission of the learned counsel for the petitioner that the input tax credit availed by the assessee on the purchase of cement used for the manufacture of RCC pipes cannot be restricted, as the notification speaks only of sale of goods and not purchase.

8.In our considered view, the contention advanced by the learned counsel for the petitioner does not merit acceptance for more than one reason.

8.1.Firstly, the power conferred on the Government to notify the exemption or reduction of tax is exercise of discretion by the Government. Therefore, the Court has to interpret the exemption notification or remission notification strictly without substituting any words.

8.2.Secondly, sub-Clause (b) of Section 30(2) of the TNVAT Act clearly states that any exemption from tax, or reduction in the rate of tax, notified under sub-Section (1) may be subjected to such restrictions and conditions as may be specified in the notification.

9.In the instant case, the assessee manufactures RCC pipes. For the assessee to be entitled to the reduced rate of tax at 4%, he should not avail the input tax credit on the purchase of same. This is a restriction or a condition specified in the notification. The Court cannot substitute words, nor delete any portion of the notification and redo the same as interpreted by the assessee. Very recently, the Hon'ble Supreme Court has held that strict interpretation has to be given to any exemption notification and the interpretation should lean in favour of the Revenue. Therefore, the contention advanced by the assessee does not merit acceptance. Further, it was contended that penalty imposed under Section 27(4) is also not justified. This contention also does not merit acceptance, since the Assessing Officer has clearly recorded a finding as to how the assessee has wrongly availed the input tax credit and consequently, the case would fall under Section 27(2) of the TNVAT Act and the penalty under Section 27(4) is automatic.

10.Thus, for the above reasons assigned by us in the preceding paragraphs, we dismiss these tax case revisions and answer the substantial questions of law against the assessee. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench),
2nd Floor, City Civil Court Buildings, High Court Campus,
Chennai-600 104.

2.The Assistant Commissioner (CT),
Sriperumbudur Assessment Circle,
Varadharajapuram, Chennai-600 123.

3.The Appellate Deputy Commissioner (CT) South,
3rd Floor, Papjm Building Annex,
No.1, Greams Road, Chennai-6.

+1 cc to The Special Government Pleader, (Taxes), Sr.No.90018

Tax Case (R) Nos.31 to 35 of 2016

CSL/14.03.2019