



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **10.07.2019**

Pronounced on : **30.08.2019**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P.(MD)Nos.15103 of 2015, 10801, 11425, 11426 to 11428, 12643 to 12646 of 2016, 16518 of 2017, 18191, 19698, 21104, 21105 of 2016, 21907 of 2016, 7819 to 7823 of 2015 and 2664 of 2017 and WMP (MD) Nos.1 of 2015 (6 Nos.), 8741 to 8744, 15084, 8388, 9561 to 9564, 13120, 15083, 15658, 9560 of 2016 and 13149 of 2017

TVL. BHARATH TRADERS

REP. BY ITS PARTNER N.VENKATESH

... PETITIONER in WP(MD) No.15103 of 2015

TVL. RAJAH COMPANY

REP. BY ITS PARTNER H.ABDUL AZEES

... PETITIONER in WP(MD) No.10801 of 2016

TVL.EAST COAST SEAWEEED INC

REP.BY ITS PROPRIETRIX A.MAHALAKSHMI

... PETITIONER in WP(MD) No.11425,11426 of 2016

TVL.SRINIVASA MARINE CHEMICA

LS REP BY ITS PROPRIETOR S.AYYANAN

... PETITIONER in WP(MD) No.11427, 11428 of 2016

TVL.VEYIL KATHA ESWARI & CO.

REP.BY ITS PROPRIETOR V.P.M.THANGARAJ

... PETITIONER in WP(MD) No.12643 of 2016

TVL.VEYIL VANTHA AMBAL AND CO

REP. BY ITS. PROPRIETOR V.P.M.MUTHUVIJAYAN

... PETITIONER in WP(MD) No.12644, 12645, 12646 of 2016

TVL.R.V.D.TOOLS HOUSE

REP. BY ITS PROPRIETOR R.V.D.RAMAIHAH

... PETITIONER in WP(MD) No.16518 of 2017



TVL.ABHINAVHA TECHNOLOGIST
REP. BY ITS PROPRIETRIX S.RADHA
... PETITIONER in WP(MD) No.18191 of 2016

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TVL. VALLI ENGINEERING COMPANY
REP. BY ITS PROPRIETRIX J.MALLIKA
... PETITIONER in WP(MD) No.19698 of 2016

TVL.OLIVE ENTERPRISES
REP. BY ITS PROPRIETRIX A.ESTHER RANI
... PETITIONER in WP(MD) No.21104, 21105 of 2016

TV.L.TECHNY CHEMY
REP. BY ITS PROPRIETRIX SASIKALA RAVI
... PETITIONER in WP(MD) No.21907 of 2016

A.M.N. MARIAPPAN
S/O A.M. NATARAJA NADAR PARTNER M/S
LAKSHMI PLASTIC INDUSTRIES
... PETITIONER in WP(MD) No.7819, 7820,
7821, 7822 & 7823 of 2015

TVL. EXCEL FITNESS & SPORTS
REP.BY ITS PARTNER: SOLOMAN RAJAKUMAR
... PETITIONER in WP(MD) No.2664 of 2017

-VS-

1. THE COMMISSIONER OF COMMERCIAL TAXES
O/O.THE PRINCIPAL AND
SPECIAL COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM CHEPAUK CHENNAI 600 005.
2. THE COMMERCIAL TAX OFFICER
SOUTH AVANI MOOLA STREET CIRCLE
COMMERCIAL TAXES COMPLEX DR. THANGARAJ
SALAI MADURAI 625 020.
... RESPONDENTS in WP(MD) No.15103 of 2015



1 THE COMMISSIONER OF COMMERCIAL TAXES
O/O. THE PRINCIPAL AND SPECIAL
COMMISSIONER OF COMMERCIAL TAXES EZHILAGAM
CHEPAUK CHENNAI 600 005

2 THE COMMERCIAL TAX OFFICER
THIRUNELVELI TOWN ASSESSMENT CIRCLE
COMMERICAL TAXES BUILDING RESERVE LINE ROAD
PALAYAMKOTTAI THIRUNELVELI DIST 627 002

... RESPONDENTS in WP(MD) No.10801 of 2016

1 THE COMMISSIONER OF COMMERCIAL TAXES
O/O.THE PRINCIPAL AND
SPECIAL COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM CHEPAUK CHENNAI 5

2 THE ASSISTANT COMMISSIONER(CT)
THIRUMANGALAM ASSESSMENT CIRCLE NO.15/91
SONALAR STREET JAWAHAR NAGAR
THIRUMANGALAM MADURAI DIST - 625 706

... RESPONDENTS in WP(MD) No.11425, 11426,
11427 & 11428 of 2016

1 THE COMMISSIONER OF COMMERCIAL TAXES
O/O. THE PRINCIPAL AND SPECIAL
COMMISSIONER OF COMMERCIAL TAXES EZHILAGAM
CHEPAUK CHENNAI 600 005

2 THE COMMERCIAL TAX OFFICER
PARAMAKUDI ASSESSMENT CIRCLE COMMERCIAL TAX
BUILDING NO.3/103 MADURAI MANDAPAM MAIN
ROAD THIRUNAGAR THELIGATHANALLUR, PARAMAKUDI,
RAMNAD DISTRICT

... RESPONDENTS in WP(MD) No.12643 & 12644 of 2016

1 THE COMMISSIONER OF COMMERCIAL TAXES
O/O/ THE PRINCIPAL AND SPECIAL
COMMISSIONER OF COMMERCIAL TAXES EZHILAGAM
CHEPAUK CHENNAI - 600 005.

2 THE COMMERCIAL TAX OFFICER
PARAMAKUDI ASSESSMENT CIRCLE COMMERCIAL TAX
BUILDING NO. 3/103 MADURAI MANDAPAM MAIN
RD THIRUNAGAR THELIGATHANALLUR PARAMAKUDI
RAMANATHAPURAM

... RESPONDENTS in WP(MD) No.12645 & 12646 of 2016



1 THE COMMISSIONER OF COMMERCIAL TAXES
O/O THE PRINCIPAL AND SPECIAL
COMMISSIONER OF COMMERCIAL TAXES EZHILAGAM
CHEPAUK CHENNAI - 600 005.

2 THE ASSISTANT COMMISSIONER(CT)
TAMILSANGAM ROAD ASSESSMENT CIRCLE
COMMERCIAL TAXES COMPLEX DR.THANGARAJ SALAI
MADURAI - 625 020.

... RESPONDENTS in WP(MD) No.16518 of 2017

1 THE COMMISSIONER OF COMMERCIAL TAXES
O/O. THE PRINCIPAL AND
SPECIAL COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM CHEPAUK CHENNAI - 600 005

2 THE ASSISTANT COMMISSIONER(CT)
TAMIL SANGAM SALAI CIRCLE COMMERCIAL
TAX BUILDING DR.THANGARAJ SALAI K.K.NAGAR
MADURAI DISTRICT - 625 020

... RESPONDENTS in WP(MD) No.18191 of 2016

1 THE COMMISSIONER OF COMMERCIAL TAXES
O/O. THE PRINCIPAL AND
SPECIAL COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM CHEPAUK CHENNAI 600 005

2 THE COMMERCIAL TAX OFFICER
THIRUNELVELI BAZZAR ASSESSMENT CIRCLE
COMMERCIAL TAX BUILDING A.R. LINE
PALAYAMKOTTAI TIRUNELVELI DT 627 002

... RESPONDENTS in WP(MD) No.19698 of 2016

1 THE COMMISSIONER OF COMMERCIAL TAXES
O/O. THE PRINCIPAL AND SPECIAL
COMMISSIONER OF COMMERCIAL TAXES EZHILAGAM
CHEPAUK CHENNAI - 600 005.

2 THE COMMERCIAL TAX OFFICER
NANGUNERI ASSESSMENT CIRCLE NO.12 MAIN
BAZAAR NANGUNERI
THIRUNELVELI DISTRICT - 627 108.

... RESPONDENTS in WP(MD) No.21104 & 21105 of 2016



1 THE COMMISSIONER OF COMMERCIAL TAXES
O/O. THE PRINCIPAL AND SPECIAL
COMMISSIONER OF COMMERCIAL TAXES EZHILAGAM
CHEPAUK CHENNAI 600 005

2 THE ASSISTANT COMMISSIONER(CT)
SRIRANGAM ASSESSMENT CIRCLE COMMERCIAL
TAX COMPLEX DISTRICT COURTS CAMPUS
CANTONMENT TRICHY 628 008

... RESPONDENTS in WP(MD) No.21907 of 2016

1 THE COMMISSIONER OF COMMERCIAL TAXES
O/O THE PRINCIPAL AND
SPECIAL COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM CHEPAUK CHENNAI 600 005

2 THE COMMERCIAL TAX OFFICER
III (ADDL) COMMERCIAL TAXES BUILDINGS
MADURAI ROAD NEAR 3V COLLEGE
VIRUDHUNAGAR 626 001

... RESPONDENTS in WP(MD) No.7819 of 2015

1 THE COMMISSIONER OF COMMERCIAL TAXES
O/O THE PRINCIPAL AND
SPECIAL COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM CHEPAUK CHENNAI 600 005

2 THE COMMERCIAL TAX OFFICER III (ADDL)
COMMERCIAL TAXES BUILDINGS
MADURAI ROAD NEAR 3V COLLEGE
VIRUDHUNAGAR 626 001

... RESPONDENTS in WP(MD) No.7820, 7821,
7822, 7823 of 2015

1 THE STATE OF TAMIL NADU
REP.BY THE SECRETARY TO THE GOVERNMENT
COMMERCIAL TAXES DEPARTMENT FORT.ST.GEORGE
CHENNAI-9.

2 THE COMMISSIONER OF
COMMERCIAL TAXES EZHILAGAM CHEPAUK
CHENNAI-5.

3 THE COMMERCIAL TAX OFFICER
PALAYAMKOTTAI.

... RESPONDENTS in WP(MD) No.2664 of 2017



Prayer in WP(MD) No.15103 of 2015:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned proceedings of the 2nd Respondent in TIN No.33304842021/12-13 dated 13.07.2015 and quash the same.

Prayer in WP(MD) No.10801 of 2016:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for records pertaining to the impugned proceedings of the 2nd Respondent in TIN: 33715581469/12-13 dated 27.04.2016 and quash the same.

Prayer in WP(MD) No.11425 of 2016:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for records pertaining to the impugned proceedings of the 2nd respondent in TIN 33615042786/2008-09 dated 09.06.2016 and quash the same

Prayer in WP(MD) No.11426 of 2016:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned proceedings of the 2nd Respondent in TIN. 33615042786/2010-2011 dated 09.06.2016 and quash the same.

Prayer in WP(MD) No.11427 of 2016:

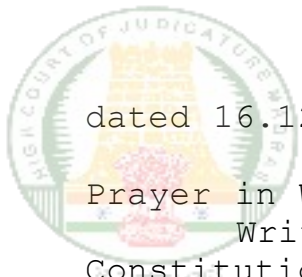
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari or any other appropriate Writ or any Order or direction in the nature of a Writ calling for records pertaining to the impugned proceedings of the 2nd Respondent in TIN 33875040994/2009-10 dated 09.06.2016 ..

Prayer in WP(MD) No.11428 of 2016:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned proceedings of the 2nd Respondent in TIN. 33875040994/2010-2011 dated 09.06.2016 and quash the same.

Prayer in WP(MD) No.12643 of 2016:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for records pertaining to the impugned proceedings of the 2nd Respondent in TIN: 33935420813/2011-12



dated 16.12.2015 and quash the same.

Prayer in WP(MD) No.12644 of 2016:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the 2nd Respondent in TIN.33655420773/2007-08 dated 16.12.2015 and quash the same.

Prayer in WP(MD) No.12645 of 2016:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the 2nd Respondent in TIN.33655420773/2008-09 dated 16.12.2015 and quash the same.

Prayer in WP(MD) No.12646 of 2016:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for records pertaining to the impugned proceedings of the 2nd Respondent in TIN: 33655420773/10-11 dated 16.12.2015 and quash the same.

Prayer in WP(MD) No.16518 of 2017:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari calling for records pertaining to the impugned proceedings of the 2nd Respondent in CST: 113513 / 2013-14 dated 19.06.2017 and quash the same.

Prayer in WP(MD) No.18191 of 2016:

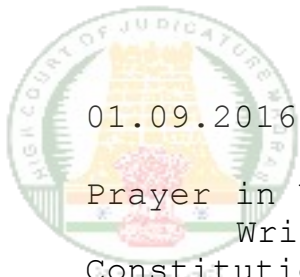
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for records pertaining to the impugned proceedings of the 2nd respondent in TIN.33894902273/12-13 dated 15.07.2016 and quash the same.

Prayer in WP(MD) No.19698 of 2016:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for records pertaining to the impugned proceedings of the 2nd respondent in TIN. 33505641482/2014-15 dated 24.08.2016 and quash the same.

Prayer in WP(MD) No.21104 of 2016:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of certiorari calling for records pertaining to the impugned proceedings of the 2nd Respondent in TIN.33465603674/2014-15 dated



01.09.2016 and quash the same.

Prayer in WP(MD) No.21105 of 2016:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for records pertaining to the impugned proceedings of the 2nd Respondent in TIN.33465603674/2013-14 dated 01.09.2016 and quash the same.

Prayer in WP(MD) No.21907 of 2016:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for records pertaining to the impugned proceedings of the 2nd Respondent in TIN: 33363463327/2013-14 dated 20.09.2016 and quash the same.

Prayer in WP(MD) No.7819 of 2015:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the 2nd Respondent in TIN 33805762082/2008-09 dated 10.04.2015 and quash the same.

Prayer in WP(MD) No.7820 of 2015:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the 2nd Respondent in TIN 33805762082/2009-2010 dated 10.04.2015 and quash the same.

Prayer in WP(MD) No.7821 of 2015:

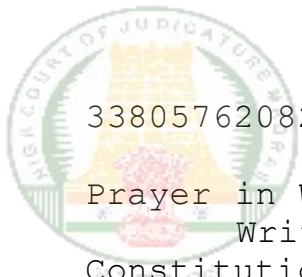
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the 2nd Respondent in TIN 33805762082/2010-2011 dated 10.04.2015 and quash the same.

Prayer in WP(MD) No.7822 of 2015:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the 2nd Respondent in TIN 33805762082/2011-2012 dated 10.04.2015 and quash the same.

Prayer in WP(MD) No.7823 of 2015:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the 2nd Respondent in TIN



33805762082/2012-13 dated 10.04.2015 and quash the same.

Prayer in WP(MD) No.2664 of 2017:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of a writ calling for the records on the file of the 3rd Respondent in TIN/33195564198/2012-13 dated 31.10.2016 and quash the same as illegal, without jurisdiction and against the provisions of 19(2)(v) of the Tamil Nadu Value Added Tax Act, 2006 as substituted by Amendment Act 5 of 2015 and pass such further other order or orders as this Honble Court.

For Petitioner in the above W.Ps : Mr.B.Rooban
For Respondents in the above W.Ps : Mrs.J.Padmavathy Devi
Special Government Pleader

COMMON ORDER

This batch of 22 writ petitions are disposed by way of this common order since the issue arising for consideration is one and the same.

2. All petitioners are dealers in terms of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'Act'). The petitioners have, in common, engaged in inter-State sales, a portion of which was against C-Declaration Form at concessional rate of tax.

3. The Act provides for a claim of Input Tax Credit (hereinafter referred to as 'ITC') on the tax paid on goods purchased within the State from a registered dealer. The relevant provision in this regard is Section 19(2) that reads thus:

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)*
- (iv)....*
- (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) ;*

4. The provisions of Section 19(2)(v) stood substituted in 2015 as per the following amendment:

'2. In Section 19 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the principal



Act)--

(1) in sub-section (2)

(i) for clause (v) the following clause shall be substituted namely, under sub-section(1) and (2) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) '

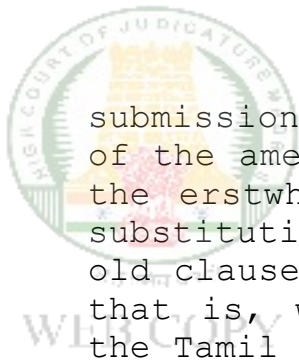
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5. Thus, while the position prior to amendment was that the ITC claimed on inter-State purchase of goods against C-Forms, that is, as per Section 8(1) of the Central Sales Tax Act, 1956 (in short 'CST Act') alone was liable to be allowed, post amendment, ITC claimed on all inter-State sales, with both registered and unregistered dealers, was liable to be allowed.

6. In all the writ petitions before me, the impugned assessments relate to periods prior to 31.03.2015, W.P.(MD)No. 15103 of 2015, for the period 2012-2013, W.P.(MD)No.10801 of 2016 for the period 2012-13, W.P(MD)No.11425 of 2016 for the period 2008-09, W.P.(MD)No. 11426 of 2016 for the period 2010-11, W.P.(MD)No.11427 of 2016 for the period 2009-10, W.P.(MD)No. 11428 of 2016 for the period 2010-11, W.P.(MD)No. 12643 of 2016 for the period 2011-12, W.P.(MD)No. 12644 of 2016 for the period 2007-08, W.P(MD) No.12645 of 2016 for the period 2008-09 W.P.(MD)No. 12646 of 2016 for the period 2010-11, W.P(MD)No 16518 of 2017 for the period 2013-14, W.P(MD)No. 18191 of 2016 for the period 2012-13, W.P.(MD)No.19698 of 2016 for the period 2014-15, W.P.(MD)No. 21104 of 2016 for the period 2014-15, W.P.(MD)No. 21105 of 2016 for the period 2013-14, W.P(MD)No.21907 of 2016 for the period 2013-14, W.P(MD)No.7819 of 2015 for the period 2008-2009, W.P.(MD)No. 7820 of 2015 for the period 2009-10, W.P.(MD)No.7821 of 2015 for the period 2010-11, W.P.(MD)No.7822 of 2015 for the period 2011-12, W.P.(MD)No.7823 of 2015 for the period 2012-13 and W.P(MD)No.2664 of 2017 for the period 2012-13, wherein the officer allows ITC only in respect of inter-State sales covered by C-Forms.

7. The claim of the assessee/petitioner was that with the substitution of sub clause (v) of Section 19(2), the benefit of ITC was available in respect of inter-State transactions whether covered by C-Form or not, in terms of both Section 8(1) and (2) of the CST Act. In short, the lis for consideration before me is 'whether the provisions of Section 19(2)(v) of the Tamil Nadu Value Added Tax Act, 2006 as amended by the Tamil Nadu Value Added Tax Act (Amendment Act, 2015) are retrospective and would apply to earlier periods of assessment or prospective, applying to the period commencing 01.04.2015 only'.

8. The facts in relation to the assessments are not relevant or germane to determine the issue as framed above, and in fact, neither party before me has adverted to the same. The legal



submissions advanced by the petitioner revolve around the language of the amendment Act itself which 'substitutes' the new clause for the erstwhile clause. According to the petitioner, the effect of substitution is that the new clause steps into the position of the old clause from the very date of inception of the original clause, that is, with effect from 01.07.2007, being the date from which the Tamil Nadu Value Added Tax became operative.

9. Learned counsel for the petitioner relies upon the following judgments and orders of this Court in support of his stand:

i) Judgment of the Supreme Court in *Vijay Vs. State of Maharashtra and others* dated 26.07.2006 in Appeal (Civil) No.3164 of 2006.

ii) *M/s Everest Industries Limited, Coimbatore Vs. the State of Tamil Nadu, Chennai* dated 06.02.2007 in W.P No. 7969 of 2014 and batch

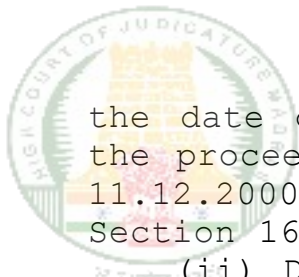
iii) *Sakthi Masala (P) Ltd., and another Vs. Assistant Commissioner (CT), Perundurai Assessment Circle, Perundurai* ((2013) 64 VST 385)

iv) *Nazareth Foods (P) Ltd., Chennai Vs. the Assistant Commissioner (CT), Aminjikkarai Assessment Circle Chennai* dated 29.04.2013 in W.P No. 11121 to 11124 of 2011.

10. The stand of the revenue is that though the word used in the Amending Act is 'substituted', the nomenclature would not, by itself, be relevant, and the amendment was always intended to come into force only prospectively. The revenue points out that where changes are effected in tax rate such changes are always understood to be prospective and if the petitioners' arguments were to be accepted, changes in tax rates announced from time to time, would relate back to the date of inception of the statute, casting an onerous burden on an assessee.

11. Reliance is placed upon a series of decisions as follows:

i) Decision of a Division Bench of this Court in *M/s Universal Abrasives, Chennai Vs. the Commercial Tax Officer, Chennai 600 108* (W.P.No.1383 of 2005 dated 30.08.2013). The Bench was concerned with an order of re-assessment and the question that arose for consideration was whether the proceedings impugned were within limitation or not. The provisions of Section 16(1)(a) of the Tamilnadu General Sales Tax Act 1956 that dealt with the assessment of escaped turnover were noted. Section 16(1)(a) had been amended with effect from 01.07.2001 and prior to the amendment had provided for a limitation of 5 years from the expiry of the year to which tax related, for completion of proceedings. Post-amendment, the period of 5 years was to be computed from the date of final assessment by the Assessing Authority. The Bench concluded that statutory provisions as applicable and prevalent on



the date of order of assessment should be applied in finalising the proceedings. Since the order of assessment had been passed on 11.12.2000, limitation was computed in line with the provisions of Section 16(1)(a), as it stood at that relevant point in time.

(ii) Decision of a learned Single Judge in *India Cycle Stores Vs. The Assistant Commisisoner (CT), Salem* (Writ Petition No.32201 of 2017 dated 23.01.2018) following the decision of the Division Bench in *Universal Abrasives* (supra).

(iii) *M/s Shanmugamari Timbers Vs. The Commercial Tax Officer, Madurai* (W.P(MD) No.3744 of 2015 dated 20.12.2018)

(iv) *Sakthi Masala (P) Ltd., Perundurai, Erode District Vs. The Assistant Commissioner (CT), Perundurai* (W.P. Nos.8526 to 8529 of 2012)

(v) *Honest Corporation Vs. State of Tamil Nadu* ((1999) 113 STC 26).

(vi) *Tharjjot Polymers Limited Vs. Union of India and others* dated 01.11.2017 in W.P.Nos.8334 of 2013 and batch) wherein a Division Bench sitting at the Principal Seat (to which I am party) concluded that a Notification issued in terms of the Central Excise Act would operate only prospectively and not retrospectively.

(vii) Judgment of the Supreme Court in *Sharif-Ud-Din Vs. Abdul Gani* (1980 AIR 303) wherein the Bench was concerned with the question of whether the provisions of Section 89(3) of the Jammu and Kashmir Representation of People Act, 1957 were mandatory or directory.

12. A Division Bench of this Court considered, the case of *Honest Corporation* (supra), an exemption from tax on the turnover from sales of Appalam, vermicelli and bakery products, all unbranded, and whether such exemption was prospective or retrospective. Citing an earlier decision of this Court in *G.Pakirisamy and Co. vs. State of Tamil Nadu* (Writ Petition Nos. 14117 of 1988 etc. batch dated 10.05.1994), the Bench states that the power to issue notifications under Section 17 of the TNGST Act granting exemptions or reductions in the rate of tax was generally always prospectively. In fact, Section 17 of erstwhile TNGST has been amended by Act 23 of 1974, effective from 01.04.1974 to specifically provide that Notifications issued thereunder may either be prospective or retrospective. In any event, Section 80 of the TNVAT Act, sub-section (4A) states thus:

(4) (a) All rules made under this Act shall be published in the Tamil Nadu Government Gazette and, unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published. (b) All notifications issued under this Act, shall, unless they are expressed to come into force on a particular day, come into force on the day on which they are so published.



13. Thus, an amendment is normally understood to be prospective. However, the aforesaid proposition is not absolute and there are certain additional parameters that are to be taken into consideration to determine the effective date of the amendment in question.

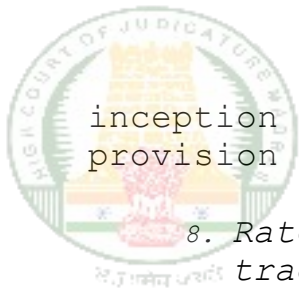
14. The first indicator or cue as to whether the amendment is to operate prospectively or retrospectively can be found in the language used in the very amendment. Normally, if an amendment is intended to operate from or with effect from a particular date, the amending act indicates the same, alternatively stating that the amendment will come into force on such date as the State Government may, by notification, appoint.

15. In the present case, though there is no specific date stipulated in the amending act, the word used is 'substituted'. The Supreme Court in *Government of India V. Indian Tobacco Association* ((2005) 7 SCC 396) noted that 'substitution' ordinarily means 'to replace' or 'to put in place of another'. Though this means that the amended provision shall step into the space occupied by the provision that it seeks to amend, the question that arises is what the effective date for such substitution is.

16. Normally, the general rule operates against retrospectivity of a statute. When an amendment modifies rights that have already vested or accrued in a party or imposes new duties, obligations or disabilities, such modification operates only prospectively to enable the affected persons/entity to be prepared to address the same. This is a settled position of law notwithstanding the equally well-settled position that there is no equity in interpreting fiscal statutes.

17. Yet another parameter to be taken into consideration is that of fairness or an examination of whether the amendment supplies an obvious or glaring omission in a legislation. In the present case, we are concerned with the claim of ITC. Section 19(2)(v) provides from inception, that an assessee engaging in interstate trade or commerce with registered dealers in terms of Section 8(1) of the CST Act is entitled to claim ITC on such transactions. It is only vide the amendment in 2015 that transactions with unregistered dealers were also extended the benefit of ITC in terms of amended Section 19(2)(v).

18. An understanding of the provisions of Section 8 of the CST Act, both sub-sections (1) and (2), is required, to examine the purpose of the substitution and to determine whether such substitution was intended to take effect from the date of

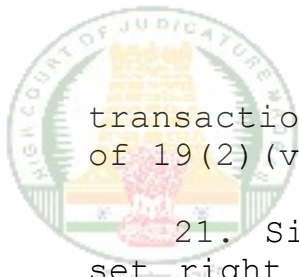


inception of the enactment or the date of amending Act and the provision is thus extracted below:

8. Rates of tax on sales in the course of inter-State trade or commerce.— (1) Every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall be three percent, of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower: Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this sub-section. (2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within subsection (1), shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State.

19. Section 8(1) of the CST Act provides the benefit of concessional rate of tax, upon production of a statutory Declaration form, to an interstate transaction with a registered dealer, and relating to specified goods. Section 8(2) stipulates that an interstate transaction with an unregistered dealer shall be visited with the same rate of tax as applicable to a domestic transaction involving identical goods. While Section 19(2)(v) extended input tax credit in respect of the transaction under Section 8(1), the same benefit was unavailable to the identical transaction with an unregistered dealer, taxable in terms of Section 8(2) of the CST Act. Though the benefit of ITC was initially restricted as an inducement to dealers to transact with registered dealers alone, Legislature has broadened, in its wisdom, the grant of benefit of ITC to transactions with unregistered dealers as well, albeit in 2015. Having taken such a decision in principle, there is no rhyme or reason to restrict the benefit only from the date of substitution. Such restriction would discriminate against transactions under Section 8(2) for the prior period, apart from leading to a dichotomy in the manner in which transactions in terms of Section 8(2) pre and post 01.04.2015 are assessed to tax.

20. It is also not the case of the revenue that the amendment has been propelled in 2015 for a specific reason or logic and the inevitable conclusion I am led to is that legislature corrected an anomaly in 2015 by way of the amendment in question, bringing



transactions under Section 8(2) also within the beneficial sweep of 19(2) (v).

21. Since the substitution in the present case only seeks to set right an anomaly it necessarily has to be effective from the date of inception of the Act itself, retrospectively.

22. These Writ Petitions are allowed and the issue framed for resolution is answered in favour of the petitioners. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

CM/sm/sl

To

1. THE COMMISSIONER OF COMMERCIAL TAXES,
O/O THE PRINCIPAL AND SPECIAL COMMISSIONER OF
COMMERCIAL TAXES, EZHILAGAM, CHEPAUK,
CHENNAI - 600 005.
2. THE COMMERCIAL TAX OFFICER,
SOUTH AVANI MOOLA STREET CIRCLE,
COMMERCIAL TAXES COMPLEX,
DR.THANGARAJ SALAI,
MADURAI - 625 020.
3. THE COMMERCIAL TAX OFFICER
THIRUNELVELI TOWN ASSESSMENT CIRCLE
COMMERICAL TAXES BUILDING RESERVE LINE ROAD
PALAYAMKOTTAI THIRUNELVELI DIST 627 002
- 4 THE COMMERCIAL TAX OFFICER
NANGUNERI ASSESSMENT CIRCLE NO.12 MAIN
BAZAAR NANGUNERI
THIRUNELVELI DISTRICT - 627 108.
- 5 THE ASSISTANT COMMISSIONER(CT)
SRIRANGAM ASSESSMENT CIRCLE COMMERCIAL
TAX COMPLEX DISTRICT COURTS CAMPUS
CANTONMENT TRICHY 628 008



6. THE ASSISTANT COMMISSIONER (CT),
THIRUMANGALAM ASSESSMENT CIRCLE NO.15/91,
SONALAR STREET, JAWAHAR NAGAR, THIRUMANGALAM,
MADURAI DISTRICT 625 706.
7. THE COMMERCIAL TAX OFFICER III (ADDL),
COMMERCIAL TAXES BUILDINGS, MADURAI ROAD,
NEAR 3V COLLEGE, VIRUDHUNAGAR 626 001.
8. THE COMMERCIAL TAX OFFICER, PARAMAKUDI ASSESSMENT CIRCLE,
COMMERCIAL TAX BUILDING NO.3/103, MADURAI MANDAPAM MAIL ROAD,
THIRUNAGAR, THELIGATHANALLUR, PARAMAKUDI, RAMANATHAPURAM.
9. THE SECRETARY TO THE GOVERNMENT,
THE STATE OF TAMIL NADU,
COMMERCIAL TAXES DEPARTMENT FORT ST. GEORGE, CHENNAI 9.
10. THE COMMERCIAL TAX OFFICER, PALAYAMKOTTAI.
11. THE ASSISTANT COMMISSIONER (CT)
TAMIL SANGAM SALAI CIRCLE COMMERCIAL TAX BUILDINGS
DR. THANGARAJ SALAI K.K.NAGAR
MADURAI DISTRICT 625 020.
12. THE COMMERCIAL TAX OFFICER
THIRUNELVELI BAZZAR ASSESSMENT CIRCLE COMMERCIAL TAX
BUILDING A.R. LINE PALAYAMKOTTAI
TIRUNELVELI DISTRICT 627 002.

+1CC TO MR.B.ROOBAN, Advocate Sr. No.84795

order made in
W.P.(MD)Nos.15103 of 2015, 10801,
11425, 11426 to 11428, 12643 to 12646 of 2016,
16518 of 2017, 18191, 19698, 21104, 21105 of 2016,
21907 of 2016, 7819 to 7823 of 2015 and 2664 of 2017
30.08.2019

AL(CO)
TR(14.02.2020)16P 14C