BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.07.2019**

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)Nos.6342 to 6346 of 2014
and M.P(MD)Nos. 1, 1, 1, 1 and 1 of 2014

Bharat Heavy Electricals Limited,
Represented by its Sr.Manager (Finance),
S.P.Nithya ... Petitioner in all WPs

Vs.

The Assistant Commissioner (CT),
Thiruvarambur Assessment Circle,
Trichy - 20. ... Respondent in all WPs

Prayer in WP(MD). 6342/ 2014 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari, under Article 226 of the Constitution of India, calling for the records on the files of the respondent herein in her CST.NO.239382/2009-10 dated 17.03.2014 and to quash the same.

Prayer in WP(MD). 6343/ 2014 :
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 on the files of the respondent herein in her CST.NO.239382/2010-11 dated 17.3.2014 and to quash the same.

Prayer in WP(MD). 6344/ 2014 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari, under Article 226 of the Constitution of India calling for the records on the files of the respondent herein in her CST.NO.239382/2011-12 dated 17.3.2014 and to quash the same.

Prayer in WP(MD). 6345/ 2014 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, under Article 226 of the Constitution of India, calling for the records on the files of the respondent herein in her CST.NO.239382/2013-14 dated 17.03.2014 and to quash the same.

Prayer in WP(MD). 6346/ 2014 :
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 on the files of the respondent herein in her CST.NO.239382/2012-13 dated 17.3.2014 and to quash the same.

In all the writ petitions:
For Petitioner : Mr.N.Inbarajan
For Respondent : Mrs.J.Padmavathy Devi
Special Government Pleader

C O M M O N ORDER

This batch of 5 writ petitions have been filed by Bharat Heavy Electricals Limited ('BHEL') challenging orders of assessment passed in terms of the Central Sales Tax Act, 1959, (in short 'Act') for the periods 2009-2010 to 2013-2014.

2.Heard Mr.Inbarajan, learned counsel appearing for the petitioner and Mrs.J.Padmavathy Devi, learned Special Government Pleader appearing on behalf of the respondent.

3. The issue agitated relates to an interpretation of Section 2(11) of the Tamilnadu Value Added Tax, 2006 (in short 'Act'). The contention of the petitioner is that Section 2(11) of the Act which defines 'capital goods' be interpreted such that the benefit of concessional rate of tax be available even in respect of those transactions that have taken place inter-state. At the time when the present writ petitions were filed, the identical question had been raised and was pending before this Court in batch of Writ Petitions.

4. For the sake of clarity, the provisions of Section 2(11) are extracted hereunder:

> *In this Act, unless the context otherwise requires:--*
>
> *2(11) ''capital goods'' means.-*
>
> *(a) plant, machinery, equipment, apparatus, tools, appliances or electrical installation for producing, making extracting or processing of any goods or for extracting or for bringing about any change in any substance for the manufacture of final products;*
>
> *(b)pollution control, quality control, laboratory and cold storage equipments;*
>
> *(c) components, spare parts and accessories of the goods specified in (a) and (b) above;*
>
> *(d)moulds, dies, jigs and fixtures;*
>
> *(e)refractors and refractory materials;*
>
> *(f)storage tanks; and*
>
> *(g)tubes, pipes and fittings thereof;*
>
> *used in the State for the purpose of manufacture, processing, packing or storing of goods in the course of business excluding civil structures and such goods as may be notified by the Government.*

5. The challenge hinged upon the definition of 'capital goods' being restricted to those equipment/activities that had been used/taken place 'in the State' and the petitioners pleaded that the definition be extended to cover equipment/activities that are used/take place outside the state as well.

6. This challenge has been considered and rejected by a Division Bench sitting in the Principal Seat in a batch of writ petitions in the case of *M/s.Schwing Stetter (India) Private Ltd Vs.The Commissioner of Commercial Taxes, Chennai* in W.P.No.37604 of 2015 and batch dated 05.04.2016. Though a review petition is stated to be pending as against the aforesaid order, at this juncture, the prevailing view is that of the Division Bench to the effect that the provisions of Section 2(11) are constitutionally valid and the benefit of concessional rate of tax will be available only in respect of those transactions, where the manufacture has taken place intra-state. To this extent, the present writ petitions have no merit.

7. Be that as it may, Mr.Inbarajan has circulated an affidavit today dated 05.07.2019, wherein an alternate contention has been raised in regard to the eligibility of Input Tax Credit ('ITC') on the ground that the disputed turnover includes inter-state sales to other State Government Departments as well as Public Sector Undertakings.

8. Reliance is placed on a judgment of the Supreme Court in the case of *TVS Motor Company Limited Vs. State of Tamilnadu and others* ((2018) 59 GSTR-1 (SC)). The challenge in that batch of writ petitions was to the provisions of Section 19(5)(c) of the Act which provides for certain contingencies, wherein, ITC would not be available. The Madras High Court, *in Jayam and Company Vs. the Assistant Commissioner(CT) and batch* (2013(65) VST-260) has upheld the constitutionality of the provision and the aforesaid decision has been confirmed by the Supreme Court in the case of *TVS Motor Company Limited* (supra), however, reading down the provision to conclude that those dealers, who are effecting sales exclusively to other State Governments, would be entitled to the benefit of ITC.

9. At paragraph Nos. 48 and 49, the Bench states as follows:

> *'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 Civil Appeal Nos.__/2018 [@SLP(C) Nos. 9320-9324 of 2015] a/w connected matters Page 45 of 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 order, 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.'

10. Learned counsel for the petitioner also states that pursuant to the impugned assessments having being made, the petitioner has sought revision of the same to the extent of C-Forms produced to cover a portion of the turnover in question. Orders of revision are stated to have been passed by the authorities, but, none are placed before me.

11. Be that as it may, the request of the petitioner appears reasonable in the light of the Judgment of the Supreme Court in the case of *TVS Motor Company* (supra) and no serious objection is raised by the learned Special Government Pleader appearing for the respondent for consideration of the same by the respondent. Thus, while rejecting the contentions of the petitioner with regard to interpretation of Section 2(11) of the Act, the impugned assessments are set aside and the same are remitted back to the file of the Assessing Officer to be re-done after consideration of the alternate contention of the petitioner in terms of Section 19 (5)(c) of the Act. For this purpose, the petitioner is directed to appear before the Assessing Authority on Thursday 25.07.2019 at 10.30 a.m along with its claim and all materials in support thereof. No further notice need be issued in this regard. The authority shall, after hearing the petitioner and considering the materials placed before it, pass a reasoned order of assessment within a period of six weeks after conclusion of personal hearing.

12. Incidentally, the parties point out that the assessment circles/ranges have been merged/re-designated in the light of the transition of the Department to the Goods and Service Tax regime. In such an event it is for the appropriate authority to ensure that the Officer concerned designated will conduct the proceedings as directed above, and complete the same within the time stipulated above.

13. These writ petitions are disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar()

// True Copy //

Sub Assistant Registrar(CS)

CM

To

The Assistant Commissioner (CT),
Thiruvarambur Assessment Circle,
Trichy - 20.

+5CC TO MR.N.INBARAJAN, Advocate Sr. No.74942 to 74946
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.75039

W.P(MD)Nos.6342 to 6346 of 2014
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PK(CO)
TR (24.07.2019) 5P 8C