BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)Nos.20893 and 20894 of 2015
and
M.P.(MD)No.1 and 1 of 2015

Tvl.L.Jeverchand Jewellers Pvt Ltd.,
Rep.by its Authorised Signatory Bharat Gehlot,
No.53, 24, Big Street,
Vadiveeswaram,
Nagercoil-629 002. ..Petitioner in both petitions

Vs.

1.The Commercial Tax Officer,
Nagercoil (Town) Assessment Circle,
No.131, MEAD Street, C.T.Building,
Nagercoil-629 001.

2.The Special Commissioner of Commercial Taxes,
"Ezhilagam", Chepauk,
Chennai-600 005.

3.The State of Tamil Nadu,
Represented by the Secretary,
to Government Commercial Taxes and
Registration b(1) department,
Fort St.George,
Chennai-600 009. ..Respondents in both petitions

COMMON PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorari, to call for the records on the files of the first respondent in TIN.33276102601/2013-14 and TIN.33276102601/2014-15 dated 15.10.2015 or any other appropriate writ, direction or order under Article 226 of the Constitution of India, 1950 quashing the same.

For Petitioner : Mr.S.Raveenkumar
For Respondents : Mr.A.Thiyagarajan
Government Advocate
(in both petitions)

COMMON ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

2. The issue in question relates to reversal of input tax credit in terms of Section 19(4) of the Tamil Nadu Value Added Tax Act, 2006. The petitioner is a dealer in gold bars and ornaments and had transferred the gold to other States for conversion into ornaments. The Assessing Authority had reversed the input tax credit on the ground that the sale has been effected in other states.

3.This issue is squarely covered as fairly stated by the revenue counsel, by a decision of the Division Bench of this Court in the case of *Patina Gold Ornaments Pvt. Ltd., vs. The Assistant Commissioner (CT) and another* [W.P.No.6377 of 2010] dated 22.09.2017. The Division Bench in the aforesaid order considers an identical case, wherein the petitioner before it had engaged in inter-state transaction for conversion of jewelry. Upon payment of conversion charges, the final product was returned to it for sale within the State of Tamil Nadu.

4. The Taxable transaction of sale in the case of the petitioner is, admittedly, within the state of Tamil Nadu. ITC was however denied to the petitioner on the ground that the transaction was inter-state sale. In an identical situation, the Division Bench holds as follows:-

> *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.*

5. In the light of the aforesaid, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

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Chennai-600 009.

+1 CC to SPL GP SR-76314.
+1 CC to Mr.A.SARAVANA KUMAR, Advocate SR-75882.

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