BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **16.12.2019**
CORAM:

THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.[MD]No.20901 of 2015
and
M.P.[MD]No.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

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

PRAYER: Writ Petition filed under Article 226 of the Constutiton of India, to issue a writ of Declaration, declaring that Section 19(2)(ii) and Sec. 19(4) of the Tamil Nadu Value Added Tax Act, 2006 as discriminatory and violative of Articles 14, 301 and 304(a) of the Constitution of India, not saved by Presidential Assent under Article 304(b) of the Constitution of India.

For Appellant : Mr.S.Suresh
For Respondents 1-3 : Mrs.S.Sreemathy, Spl. G.P.

ORDER

[Order of the Court was made by
The Hon'ble Chief Justice]

Heard the learned counsel for the petitioner.

2.The petitioner raises a challenge to Section 19(2)(ii) and Sec. 19(4) of the Tamil Nadu Value Added Tax Act, 2006 as discriminatory and violative of Articles 14, 301 and 304(a) of the Constitution of India, not saved by Presidential Assent under Article 304(b) of the Constitution of India.

3.The vires of the said challenge was directly raised in the case of ***Patina Gold Ornaments Pvt. Ltd. Vs. The Assistant Commissioner (CT)*** and a Division Bench of this Court vide judgment dated 22.09.2017 ruled as under:

> *"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.*
>
> *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 @006 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 petition was imposed at the rate of 1%."*

4.We have heard the learned counsel for the parties and we find no reason or good ground to differ from the view taken by the learned Division Bench, and consequently, this writ petition is also allowed on the same terms. However, there shall be no order as to costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (writs)

// True Copy //

Sub Assistant Registrar(CS)

Arul/GCG

To

1.The Commercial Tax Officer,
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3.The Secretary to Government,
State of Tamil Nadu
Commercial Taxes and Registration B(1) Department,
Fort St. George, Chennai - 600 009.

+1 CC to Mr.A.SARAVANAKUMAR, Advocate (SR-105676[F] dated 18/12/2019)

JUDGMENT MADE IN
W.P.[MD]No.20901 of 2015
and
M.P.[MD]No.1 of 2015
16.12.2019

MK (06.01.2020) 3P 5C