IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2020

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 20566 to 20568 of 2012
and
M.P. Nos. 1, 1, 1 of 2012

M/s.Selvam Agencies,
Represented by its Proprietor-R.Jayachandran,
No.3, K.K.Road, Villupuram.
... Petitioner in all W.Ps

Vs

The Assistant Commissioner (CT),
Villupuram-II, Villupuram. ... Respondent in all W.Ps

Prayer in W.P. No. 20566 of 2012: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the Respondent in his proceeding in TIN No.33754700784/2007-2008 dated 25.06.2012 quash same.

Prayer in W.P. No. 20567 of 2012: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the Respondent in his proceeding in TIN No.33754700784/2008-2009 dated 25.06.2012 quash same.

Prayer in W.P. No. 20568 of 2012: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the Respondent in his proceeding in TIN No.33754700784/2009-2010 dated 25.06.2012 quash same.

For Petitioner : Mr. S. Rajasekar
(in all W.Ps)

For Respondent : Mr. M. Hariharan
(in all W.Ps) Additional Government Pleader

COMMON ORDER

Heard the learned counsel for the Petitioner and the Additional Government Pleader for the Respondent.

2. The Petitioner has filed this writ petition, seeking for issuance of a Writ of Certiorari, calling for the records on the file of the Respondent in his proceeding in TIN No.33754700784/2007-2008, TIN No.33754700784/2008-2009, TIN No.33754700784/2009-2010 dated 25.06.2012 for the Assessment Years 2007-2008, 2008-2009, 2009-2010 seeking to recover the proportionate credit in terms of amendment under sub-section 20 in Section (19) of the Tamil Nadu Value Added Tax Act, 2006 (in short TNVAT Act, 2006) which was inserted into the TNVAT Act, 2006 with effect from 19.08.2010.

The said provision reads as follows:-

> 19(20): Notwithstanding anything contained in this section, where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of the input tax credit over and above the output tax of those goods shall be reversed." (Inserted by the Second Amendment with effect from 19.08.2010)

3. The learned counsel for the Petitioner and the Respondent submits that the issue is now squarely covered by the decision of the Hon'ble Supreme Court in the case of Jayam & Co. Vs Assistant Commissioner and another, (2016) 96 VST 1 (SC). The Hon'ble Supreme Court in the said decision has held as under:-

> "When we keep in mind the aforesaid parameters laid down by this Court in testing validity of retrospective operation of fiscal laws, we find that the amendment in question fails to meet these tests. The High Court has primarily gone by the fact that there was no unforeseen or unforeseeable financial burden imposed for the past period. That is not correct. Moreover, as can be seen, sub-section (20) of Section 19 is altogether new provision introduced for determining the input tax in specified situation, ie., where goods are sold at a lesser price than the purchase price of goods."

While upholding vires of sub-section (20) of Section 19 of the said TNVAT Act, this Court also observed as follows:-

> "When we keep in mind the aforesaid parameters laid down by this Court in testing validity of retrospective operation of fiscal laws, we find that the amendment in question fails to meet these tests. The High Court has primarily gone by the fact that there was no unforeseen or unforeseeable financial burden imposed for the past period. That is not correct. Moreover, as can be seen, sub-section (20) of Section 19 is altogether new provision introduced for determining the input tax in specified situation, ie., where goods are sold at a lesser price than the purchase price of goods. The manner of calculation of the ITC

was entirely different before this amendment. In the example, which has been given by us in the earlier part of the judgment, "dealer" was entitled to ITC of Rs.10 on resale, which was paid by the dealer as VAT while purchasing the goods from the vendors. However, in view of Section 19(20) inserted by way of amendment, he would now be entitled to ITC of Rs.9.50. This is clearly a provision which is made for the first time to the detriment of the dealers. Such a provision, therefore, cannot have retrospective effect, more so, when vested right had accrued in favour of these dealers in respect of purchases and sales made between January 1, 2007 to August 19, 2010. Thus, while upholding the vires of sub-section (20) of Section 19, we set aside and strike down Amendment Act 22 of 2010 whereby this amendment was given retrospective effect from January 1, 2007."

4. The issue in the impugned notices pertains to the period prior on 19.08.2010. That being the case, there is no point in relegating the Petitioner to the alternate remedy before the adjudicating officer. These writ petitions deserves to be allowed. Accordingly, these Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

arb

To

The Assistant Commissioner (CT),
Villupuram-II, Villupuram.

+1cc to Mr.R.Hemalatha, Advocate, S.R.No. 1592
+1cc to the Special Government Pleader(Taxes), S.R.No. 1541

W.P. Nos. 20566 to 20568 of 2012
and
M.P. Nos. 1, 1, 1 of 2012

BP(CO)
GN(27/02/2020)