# IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 17.12.2020**

**CORAM**

**THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU**

**W.P. No. 22415 of 2015**
**and**
**M.P. Nos. 1 and 2 of 2015**

Tvl. S.T.K. Cement Pvt. Ltd.,
Rep. by its Director Mr. S.Ashok Kumar,
No. 70, Station Road,
Chrompet,
Chennai – 600 044. ... Petitioner

-vs-

1. The Assistant Commissioner (CT),
   Chrompet Assessment Circle,
   No. 117, Station Road,
   Radha Nagar,
   Chennai – 600 044.

2. Tvl. Muthulingam,
   No. 16, Bajanai Koil Street,
   G.S.T. Road, Kelambakkam,
   Chennai – 600 048.

3. Tvl. Venkateswara Hardwares,
   No. 3/57, Anna Rice Mill Complex,
   Kundrathur,
   Chennai – 600 069.

4. Tvl. Sri Kumar Hardware,
   No. 13/3, Shankar Ganesh Nagar,
   Nandivaram, Guduvanchery,
   Chengalpattu – 603 202. ... Respondents

**Prayer:-** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the First Respondent in his proceedings in TIN:33310947417/2014-15/A3 and quash the proceeding dated 14.07.2015 passed therein.

| | | |
|---|---|---|
| For Petitioner | : | Mr. P.V.Sudakar |
| For Respondents | : | Mrs. G.Dhana Madhri,<br>Government Advocate (Taxes) (for R1)<br><br>No appearance (for R2 to R4) |

**O R D E R**
**(through video conference)**

Heard Mr. P.V.Sudakar, Learned Counsel for the Petitioner and Mrs. G.Dhana Madhri, Learned Government Advocate (Taxes) appearing for the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.



2. The Writ Petition challenges the Order No. TIN 33310947417/ 2014-15/A3 dated 14.07.2015 passed by the First Respondent attaching the amounts due by the Second to Fourth Respondents to the Petitioner for recovery of tax arrears, which has been assessed for the year 2014-2015.

3. Learned Government Advocate appearing for the First Respondent has filed memo dated 16.12.2020, which reads as follows:-

> *" It is submitted that in the impugned proceedings for the assessment year 2013-14, it has been erroneously quoted as assessment year 2014-15 under TNVAT Act, 2006. But the demand actually pertains to the assessment year 2013-14. In respect of assessment year 2014-15, there is no pending arrears as far as the Petitioner is concerned. The above submissions are made before this Hon'ble High Court for kind consideration."*

The said clarification made by the First Respondent is placed on record.

4. It is brought to notice by the Learned Counsel for the Petitioner that the impugned orders for recovery were issued in furtherance to the assessment Order No. TIN/ 33310947417/2013-14 dated 21.05.2015 passed by the First Respondent. It is further submitted that the said assessment order dated 21.05.2015 for the year 2013-2014 passed by the First Respondent was assailed by the Petitioner in the Writ Petitions in W.P. No. 19181 of 2015 that had been dismissed by order dated 01.07.2015 passed by this Court, but on appeal in W.A. No. 1040 of 2015 preferred by the Petitioner before the Division Bench of this Court, it was held in the order dated 05.08.2015 as follows:-

*"5. The only ground on which the appellants challenge the orders of the learned Judge is that when the issue raised before the Assessing Officer was on an interpretation of a circular issued by the Joint Commissioner and also covered by another decision in favour of one of the group companies, there was no necessity for the appellants to go to the appellate authority and exhaust all statutory remedies.*

*6. Reliance is placed upon a circular issued by the Commissioner of Commercial Taxes on 4.11.2013. The said circular is on the scope of interpretation of Section 19(20) of the Tamil Nadu Value Added Tax Act, 2006.*

*7. Section 19(20), which was introduced with effect from 19.8.2010, but which was later given retrospective effect from 1.1.2007, according to the circular of the Commissioner, indicates three steps in-built within the same for operation of the same. These three steps are as follows:*

*"1. Identification of cases in which huge ITC is accumulated on account of lesser sale price than the purchase price.*

*2. The above facts have to be ensured by verifying the purchase and sale price per unit.*

*3. If the above two things are found in a business concern, the quantum of ITC which exceeds the output tax shall be reversed."*

*8. Therefore, based upon the orders passed by the High Court on 17.7.2013 in a batch of writ petitions upholding the Constitutional validity of Section 19(20) and also based upon the representations of the association of manufacturers and traders, the Commissioner has directed in his circular that the provisions of Section 19(20) have nothing to do with the levy of tax on the discount, which has to be dealt with independently as per the provisions of the Act.*

*9. It appears that following the above circular, one of the sister companies of the appellants by name M/s.Sree Laxmi*

*Traders appeared to have had the benefit, in respect of the assessment years 2007-2008, 2008- 2009, 2009-2010 and 2010-2011. The copies of the assessment orders passed on 31.3.2015 in respect of M/s.Sree Laxmi Traders for the aforesaid assessment years, are filed before us. Those orders show that the Assistant Commissioner (CT) in Surapattu Assessment Circle had granted the benefit of the circular to one of the sister concerns.*

*10. In such circumstances, the only contention raised by the appellants in their writ petitions and in these writ appeals is that two different assessing officers cannot take two different views in respect of companies, which form part of the same group companies.*

*....*



*13. In the objections submitted on 28.1.2015 to the notice issued on 8.1.2015, the appellants have brought this fact to the notice of the respondent. But, in the orders impugned in the writ petitions, the respondent has not taken note of the same.*

*Therefore, we are of the considered view that the impugned orders could be set aside and the matter sent back to the respondent for a fresh consideration.*

*14. Accordingly, the writ appeals are allowed and the orders of the learned Judge are set aside. The writ petitions are allowed and the impugned assessment orders passed by the respondent are set aside. The matter is remitted back to the respondent. The respondent shall take into account the circular of the Commissioner dated 4.11.2013 and the orders of assessment dated 31.3.2015 passed in respect of M/s.Sree Laxmi Traders and pass orders afresh within a period of six weeks. No costs. Consequently, the above M.Ps. are closed."*

It is also reported that the First Respondent has passed fresh order of assessment for the year 2013-2014 by Order No. TIN 33310947417/2013-14 dated 15.09.2015, a copy of which has been produced. On the said premise, it is contended that inasmuch as the impugned order for recovery had been issued for the amount under an assessment order which has been set aside, such demand cannot survive and would have to be nullified.

5. There is substantial force in the aforesaid submissions made by the Learned Counsel for the Petitioner, which deserves acceptance and the impugned orders of recovery of the amounts demanded for the assessment made for the year 2013-2014 under the TNVAT Act, is set aside. Though obvious, it is made clear that the First Respondent is not precluded from recovering any amount due from the Petitioner in respect of fresh order of assessment passed by the First Respondent in Order No. TIN 33310947417/ 2013-14 dated 15.09.2015, if not already paid, by appropriate legal proceedings in the manner recognized by law.

In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

**17.12.2020**
**2/3**



vjt
Index: Yes/No
**Note: Issue order copy by 23.12.2020.**

To

1. The Assistant Commissioner (CT),
   Chrompet Assessment Circle,
   No. 117, Station Road,
   Radha Nagar,
   Chennai – 600 044.

**P.D. AUDIKESAVALU, J.**

**vjt**



**W.P. No. 22415 of 2015**

**17.12.2020**
**2/3**