THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2020

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THE HON'BLE MR. JUSTICE C. SARAVANAN

W.P. Nos. 25436, 25437 & 25438 of 2014

Mrs. Pasupathi Engineering,
Rep. by its Proprietor Prashant Bansal,
No.1/223, 1st Floor,
Pondy Main Road,
Valudhavur,
Villupuram Taluk. : Petitioner in all writ petitions

-vs-

The Assistant Commissioner of (CT),
Villupuram-II, Assessment Circle,
Master Plan Complex (Collector Office Complex),
Villupuram 605 602.
: Respondent in all writ petitions

Prayer in W.P.No. 25436 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the respondent in TIN.33954723372/2011-12 dated 13.08.2014 and quash the same as discriminatory and violative of Article 14, 301 and 304 (a) of the Constitution of India.

Prayer in W.P.No. 25437 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the respondent in TIN.33954723372/2013-14 dated 13.08.2014 and quash the same as discriminatory and violative of Article 14, 301 and 304 (a) of the Constitution of India and against the principles of natural justice and fair play.

Prayer in W.P.No. 25438 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the respondent in TIN.33954723372/2012-13 dated 13.08.2014 and quash the same as discriminatory and violative of Article 14, 301 and 304 (a) of the Constitution of India.

For Petitioner
in all writ petitions : Mr. T. Pramodkumar Chopra

For Respondent
in all writ petitions : Mr. R. Swarnavel
Government Advocate

COMMON ORDER

In these writ petitions, the petitioner has challenged the impugned notice dated 13.08.2014 for the assessment years 2011-2012; 2012-2013; 2013-2014 and seeks to quash the same based on the common order passed by this Court in W.P. Nos.12057, 12058, 7646 and 7647 of 2015, dated 18.11.2019, wherein, the writ petitions were allowed to the extent to which they relate to reversal of ITC and the show cause notices impugned therein were quashed.

2. The Petitioner submits that the denial of input tax credit when raw materials are purchased on payment of local tax within the state for use in manufacturing purpose outside the State, is ex facie contrary to law.

3. The learned counsel for the petitioner and the respondent have fairly submitted that all the issues raised herein, are now covered by the Division Bench of this Court in W.P. No.6377 of 2010 [Patina Gold Ornaments Pvt. Ltd., v. The Assistant Commissioner (CT), wherein in paragraph Nos. 23, 24 & 30 are held as follows:

> "23. The argument of the respondent that the impugned provision, that is Section 19(2)(ii) of the 2006 Act, which empowers them to make such distinction was valid as it enabled the State to give a fillip to industrialization and generation of employment, is flawed in the facts of this case. The reason we say this is because the impugned provision applies across the board, making neither a distinction between old and new business / industry not limiting its impact to a specified period. The result is that goods which are similar in quality and nature bear a different tax burden, thus, violating Article 304(a) of the Constitution.

24. The impugned provision seeks to pivot the denial of tax credit on the basis circumstance and not on the basis of quality or nature of goods. The fact that ITC is denied on the basis of where the manufacturing unit of the assessee is located results in hostile discrimination against those who have their manufacturing unit located outside the State of Tamil Nadu.

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 convesion 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.

4. In the light of the above, the respondent is directed to pass appropriate orders following the decision of this court in Patina Gold Ornaments Private Limited versus The Assistant Commissioner (CT) referred to supra to the extent they seek to deny imput tax credit to the petitioner on the ground that the inputs purchased from local market sent for manufacturing purpose outside the state. In so far as the other issues is concerned, petitioner is directed to file a reply within a period of 30 days from the receipt of a copy of this order before the respondent.

5. The respondent is directed to pass appropriate orders in accordance with law within a period of 30 days thereafter, after considering any reply that may be filed by the petitioner. Needless to state, respondent shall hear the petitioner before passing orders. These writ petitions therefore stand partly allowed with the above observation. No cost.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner of (CT),
Villupuram-II, Assessment Circle,
Master Plan Complex (Collector Office Complex),
Villupuram 605 602.

+1cc to Mr.T.Pramodkumar Chopra , Advocate, SR.No.5376.
+1cc to Government Pleader, SR.No.5954.

W.P. Nos. 25436, 25437 & 25438 and 39908 of 2016
and
W.M.P. Nos. 26415 and 26416 of 2016

CP(CO)
CSR: 04.03.2020