IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No. 34921 of 2019
and
WMP. NoS.35703 & 35704 of 2019

1. M/s.Nuts N Spices
Represented by S. Sunil Kumar,
Managing partner ,
75, Nungambakkam High Road,
Chennai -34. .. Petitioner

Vs

1.The Appellate Deputy Commissioner (CT)
Chennai (Central) III Floor,
PAPJM Building, No.1, Greams Road, Chennai - 6.

2.The Commercial Tax Officer,
Valluvarkottam Assessment Circle,
Chennai. .. Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records on the files of the first respondent in APV in No.102/14 dated 7.11.19 and quash the same as being without jurisdiction void ab initio and contrary to the principles stated by the Supreme Court in the decision reported in (2016) 96 VST 1 (Jayam and Co. Vs. Assistant Commissioner and another) and hence invalid and illegal.

For Petitioner :Mr.V.Srikanth

For Respondents :Mr.MohamedShafiq
Special Government Pleader

O R D E R

The petitioner is a dealer in nuts and spices and an assessee on the files of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short ‘Act’). For the period 2008-09, the petitioner received a show cause notice proposing reversal of Input Tax Credit (ITC) claimed as well as levy of penalty.

2. The petitioner had received a discount from its vendors and according to it, VAT had been remitted on the gross selling price prior to the grant of discount. In finalising the assessment, the officer proposed the reversal of the ITC in regard to the component of discount. Secondly, ITC on packing materials purchased by the petitioner from local registered dealers was also sought to be reversed on the ground that the materials were utilised for packing of export commodities.

3. Despite objections, the proposals in the notice were confirmed along with penalty under Section 27(4) of the Act. An appeal was filed by the petitioner before the first Appellate Authority, arrayed as R1, that came to be rejected on 07.11.2019 as against which the present writ petition is filed.

4. Two issues arise in this Writ Petition. The first relates to the reversal of ITC on discounts received by the petitioner from the supplying dealers. Though both learned counsel have taken me in detail through the provisions of Section 2(41) and the Explanation thereunder, Rule 10(6)(B)(ii) of the Tamil Nadu Value Added Tax Rules, 2007 and Section 19(20) of the Act, a detailed exposition of the aforesaid may not be necessary in the present case, since Section 19(20) which has been invoked to deny the benefit of ITC, has itself been inserted only with effect from 19.08.2010. Though a Division Bench of this Court had initially held that the provision would operate retrospectively and impact prior assessment periods as well, the Supreme Court in the case of Jayam and Co. Vs. Assistant Commissioner and another (2016) 96 VST 1) reversed the aforesaid conclusion of this Court confirming the position that Section 19(20) would operate only from the date of its insertion, prospectively, i.e., from 19th August, 2010. The Bench states at paragraph 18 as follows:

> "18. 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, i.e., 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 judgement, 'dealer' was entitled to ITC of Rs.10/- on re-sale, 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 01, 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 01, 2007.

5. Thus the provision could not have been invoked in the present case, for the period, viz. 2008-09. The order of assessment is dated 11.12.2013, when the provision was part of Statute and the question of retrospectivity or otherwise of the provision came to be decided on 05 August, 2016 by the Supreme Court in the case of Jayam and Co (supra). The invocation of Section 19(20) in the present case is thus not in order and to this extent, the assessment is quashed. Penalty levied under Section 27(4) to this extent is also quashed.

6. As regards the second issue relating to the reversal of ITC in regard to packing materials, it is seen that the petitioner has specifically challenged this reversal relying on the provisions of Section 19(2)(ii) of the Act, which permits the grant of input tax on packing materials, containers and label and other materials used for packing goods. This ground has not been referred to or adjudicated upon by the Appellate Authority and hence, the order of the first respondent is quashed and the matter remitted to the files of the Assessing Officer to be redone de novo after taking into account the submissions of the assessee, in accordance with law .

7. This Writ Petition is disposed as above. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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MR(CO)
CB(23/09/2020)