BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.02.2020**

CORAM:

THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.[MD]Nos.10278 and 10279 of 2013

and M.P.Nos.1 and 1 of 2013 in W.P.(MD) Nos.10278 and 10279/2013

M/s.Thangamayil Jewellery Ltd.,
Rep. by its Joint Managing Director
Ba.Ramesh
No.124, Nethaji Road,Madurai. : Petitioner in both Writ Petitions

Vs.

1.The Assistant Commissioner (CT)
Nethaji Road Assessment Circle,
Madurai - 20

2.The State of Tamil Nadu
represented by its the Secretary to Government
Department of Commercial Taxes & Registration,
Fort St. George, Chennai. : Respondents in both Writ Petitions

PRAYER in W.P.(MD) No.10278 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of declaration declaring that the provisions of Section 19(2)(ii) and Section 19(4) of the Tamil Nadu Value Added Tax Act, 2006 infringe Articles 14, 19(1)(g) and violative of Articles 301 and 304 (a) not being saved by Article 304(b) of the Constitution of India and therefore, unenforceable and the resultant recoveries and forfeiture of the input tax credit under Section 27 of the said Act in respect of the bullion and raw material purchased in the State of Tamil Nadu converted into finished jewellery outside the State and brought back as finished ornaments into the State of Tamil Nadu and sold in the State are without the sanction of Article 265 of the Constitution of India and illegal.

PRAYER in W.P.(MD) No.10279 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records and quashing the proceedings of the First respondent herein in TIN No.33304981708/2009-10 dated 31.01.2013 insofar as it disallows or recover the input tax credit in respect of the purchase of the inputs entrusted to a job worker outside the State for manufacture on condition of return into the State of Tamilnadu and found sold in the State of Tamilnadu under Tax Invoice.

For Petitioners : Mr.S.Karunakar
For Respondents : Ms.J.Padmavathi Devi
Special Government Pleader

COMMON ORDER

[Order of the Court was made by **SUBRAMONIUM PRASAD, J.**]

Challenge in the instant writ petitions is to the provisions of Section 19(2)(ii) and Section 19(4) of the Tamil Nadu Value Added Tax Act (hereinafter called as 'VAT Act').

2. The facts in brief are that the petitioners are engaged in sale of gold jewellery. The petitioners buy bullion in the State and sent them outside the State for making gold jewellery. The jewellery is brought back into the State of Tamil Nadu and sold in the State of Tamil Nadu. The petitioners claim the benefit of input tax credit under Section 19(2)(ii) of the Act, which has been denied to them, because of Section 19(2)(ii) of the VAT Act.

3. Similar challenge was made in the case of ***Patina Gold Ornaments Pvt. Ltd., v. The Assistant Commissioner (CT), Erode***, in ***W.P.No.6377 of 2010.*** This Court, by order dated 22.09.2017, has struck down the validity of Section 19(2) (ii) of the Tamil Nadu Value Added Tax Act. Paragraph Nos.30 and 31 of the said order reads 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 ie., bullion/worn-out jewellery for conversion into final product (ie., 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.
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> 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 2006 Act to the extent of rate of tax provided therein, ie., 3% (which was the rate provided therein at the relevant point of time), as that would make the relief inefficacious since the subject goods., ie., bullion/worn-out jewellery on which tax credit was sought by the writ petitioner was imposed at the rate of 1%."

4. In view of the above, the instant writ petitions are allowed on the same lines. However, there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)

RR

To

1.The Assistant Commissioner (CT)
Nethaji Road Assessment Circle,
Madurai - 20

2.The Secretary to Government
Department of Commercial Taxes & Registration,
Fort St. George, Chennai.

+2 CC's to M/s.S.KARUNAKAR, Advocate (SR-7770 and 7772

+1 CC to M/s.SPL.GP (SR-8098[F] dated 25/02/2020)

JUDGMENT MADE IN

W.P.[MD]Nos.10278 and 10279 of 2013 and

M.P.Nos.1 & 1 of 2013 in W.P.(MD)No.10278 & 10279/2013

24.02.2020

sma /03/03/2020/3p/6c