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]No.12979 of 2013

and

M.P.(MD)No.1 of 2013

Geethakrishna Spinning Mills (P) Limited,
represented by its Managing Director,
V.K.Subramania Raja,
116-2A, Madurai Road,
Rajapalayam. : Petitioner

Vs.

1.The State of Tamil Nadu,
represented by Secretary to Government,
Commercial Taxes,
Fort St.George,
Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 007.

3.The Assistant Commissioner (CT)-II, (FAC),
Commercial Taxes Department,
Rajapalayam - 626 117. : Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Declaration, to declare the provisions of Rule 10(4)(e) of the Tamil Nadu Value Added Tax Rules, 2006, being ultravires the provisions of Section 19(3)(a) read with Section 2(11) of the Tamil Nadu Value Added Tax Act, 2006, the proviso to Section 19(6) insofar as the same restricting the scope of 200% ITC allowance falling under Section 19(3)(a) and conferring unbridled power for the assessing authorities to compulsorily resort to the formula under Rule 10(4)(e) despite presence of books of accounts exhibiting the actual usage of capital goods purchased and used in the manufacture of taxable goods as unconstitutional and violative of Articles 14, 19(1)9(g), 265, 301-304 of the Constitution of India and struck down as void.

For petitioner : Mr.T.Bashyam
For respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

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[Order of the Court was made by
The Hon'ble The Chief Justice]

Learned counsel for the petitioner has fairly invited the attention of this Court to a Division Bench judgment of this Court in the case of M/s.Schwing Stetter (India) Pvt. Ltd., F-71, SIPCOT Industrial Park, Irungattukottai, Sriperumbudur Taluk, Kancheepuram District Vs. the Commissioner of Commercial Taxes, Ezhilagam, Chepuak, Chennai and another, decided on 05.04.2016 in W.P.Nos.37604 of 2015, etc. batch, where a challenge raised to the clarification dated 11.04.2007 issued under the Tamil Nadu Value Added Tax Act, 2006, in respect of capital goods under Section 2(11) thereof, was rejected and the validity of Section 2(11) was upheld. Learned counsel submits that the said decision was taken up in appeal before the Hon'ble Supreme Court and SLP came to be dismissed.

2. It is submitted that the challenge raised herein to the proviso to Section 19(6) regarding restricting the scope of exemption as sought is on the same footing and on the ground as was raised while raising a challenge to Section 2(11) of the Tamil Nadu Value Added Tax Act, 2006. It is, therefore, submitted that the same reasoning would apply herein and as such, the challenge raised cannot be at present legally sustained.

3. Learned counsel, therefore, submits that this petition may be accordingly consigned to records with liberty to the petitioner to question the correctness or otherwise of the proceedings in a revision that can be preferred under section 54 of the Tamil Nadu Value Added Tax Act. It is also pointed out that under the interim order passed in this writ petition, 25% of tax has been deposited. It will be open to the petitioner to claim adjustment or otherwise depending upon the outcome of the revision that will be preferred by the petitioner.

4. This writ petition is accordingly consigned to records with liberty as sought for. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AS)

// True Copy //

/ /2020
Sub Assistant Registrar(CS)

gcg/cmr

To

1.The Secretary to Government,
State of Tamil Nadu,
Commercial Taxes,
Fort St.George, Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 007.

3.The Assistant Commissioner (CT)-I, (FAC),
Commercial Taxes Department,
Rajapalayam - 626 117.

+1 CC to M/s.T.BASHYAM, Advocate (SR-7984[F] dated 24/02/2020)

ORDER MADE IN
W.P.[MD]No.12979 of 2013
and
M.P.(MD)No.1 of 2013
24.02.2020

KK/04.03.2020/3P-5C