BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.02.2020
CORAM:
THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.[MD]Nos.18723 & 18724 of 2018
and
W.M.P.[MD]Nos.4973 & 4974 of 2019

Myers Tyre Supply (India) Limited
Represented by its Additional Director,
P.Gopalakrishnan,
TVS Building,
Post Box No.21, 7-B West Veli Street,
Madurai - 625 001. : Petitioner in both Writ Petitions

Vs.

1.The Assistant Commissioner (ST),
West Veli Street Assessment Circle,
Dr.Thangaraj Salai,
Madurai - 625 020.

2.Goods and Services Tax Net Work Ltd.,
(East) Wing, 4th Floor,
World Market,
New Delhi - 110 037.

3.The State of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes and Religious B2 Department,
Fort. St. George,
Chennai - 600 009.

4.Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi. : Respondents in both Writ Petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying for a Writ of Declaration, declaring the words “within 90 days of the appointed day” found under the main part of Rule 117(1) of the Central Goods and Services Tax Rules, 2017 and the proviso thereunder, as ultra vires, Section 140(3) and Section 164 of the Central Goods and Services Tax Act, 2017.

For Petitioner : Mr.N.Inbarajan
For Respondents 1 to 3 : Mr.VR.Shanmuganathan
Special Government Pleader
For Respondent No.4 : Mr.S.Karthick
[In both Writ Petitions]

O R D E R

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

We had passed the following order yesterday [ie., 25.02.2020]:

> *The petitioner is a dealer and he engaged in the business of purchasing Tyre Patches from the manufacturers. In the negotiations and transactions, the tax liability by the petitioner is borne by making payment of Excise Duty which, according to the petitioner, is component - A and then the payment of VAT which is component - B. The petitioner has come up challenging the validity of the prescription of entitlement of credit of input tax being limited within a time prescription as contained in Rule 117 of the Central Goods and Services Tax Rules, 2017 as being violative of substantive rights of the petitioner to take credit of input tax by virtue of Section 140 of the Central Goods and Services Tax Act, 2017. The contention is that such a substantive right is otherwise available and cannot be limited by the prescription of time for which reliance is also placed on two judgments of the Division Benches of Gujarat High Court and then, Punjab and Hariyana High Court viz., M/s.Siddharth Enterprises Through Partner Mahesh Liladhar Tibdewal Vs. the Nodal Officer in R/Special Civil Application No.5758 of 2019, etc. batch decided on 06.09.2019; and Adfert Technologies Pvt. Ltd., Vs. Union of India, reported in 2020 (32) G.S.T.L. 726 (P & H).*
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> *2. It is, therefore, urged that this entitlement to take credit of input tax cannot be diluted by virtue of prescription of time which prescription has further been amended by virtue of introduction of Rule 117 (1) (A). In sum and substance, the argument remains the same that any such prescription of time would impede the very substantive right which preserved under Section 140 of the Act, as referred to hereinabove.*

3. The second argument of the learned counsel for the petitioner is that the very same Rule creates two different classes of assesees for extending the same benefit, which is otherwise available both to the petitioner, who was also an assessee under prior regime of the Central Excise Act as well as the VAT Act co-existed and he is also an assessee under the present regime of Tamil Nadu General Sales Tax Act. It is the contention that those assessees, who have come into existence and are liable for tax under the new regime after the appointed date, if they are being extended certain benefits relating to such credit of input tax, then the very same benefits should be made available to the petitioner and any distinctive application of law would amount to an act of discrimination thereby inviting the scrutiny of action on the unveil of the Article 14 of the Constitution of India.

4. Having advanced these submissions, learned counsel pointed out that a similar writ petition is also pending at the Principal Seat raising a challenge to the validity of the Act and Rules, and at the same time, as per his information received, the said situation has now taken a different turn with the introduction of new Finance Bill in the Parliament, whereunder, there is a proposal for bringing about an amendment in prescribing the time limit in the parent Section, ie., Section 140 itself. He, therefore, submits that if an amendment is brought about introducing the time limit prescribed with retrospective effect, in order to overcome the view expressed by two High Courts referred to hereinabove, the present challenge on the first ground may be rendered ineffective. But, even if that is so, then in that event, the second ground of discrimination may survive in view of the judgments referred to hereinabove, unless the new Finance Bill also tinkers with the same.

5. In our opinion, it would be appropriate that the learned counsel for the petitioner as well as the learned counsel for the State may both appropriately obtain instructions as to the manner in which the new Finance Bill is being proceeded or any notification having been issued covering the challenge raised in the present writ petition.

*6. Put up on **26.02.2020.**"*

2.Learned Counsel for the petitioner in these writ petitions states that he has instructions not to proceed with the challenge raised to the vires of the provisions involved in the two writ petitions and therefore, he may be permitted to withdraw the writ petitions at this stage.

3.The Writ Petition is accordingly, dismissed as withdrawn. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MR

To

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Ministry of Finance,
Department of Revenue, New Delhi.

+1 CC to M/s.SPL.GP (SR-8792[F] dated 27/02/2020)
+2 CC to M/s.N.INBARAJAN, Advocate (SR-8499[F] dated 26/02/2020). 8498
+2 CC to M/s.S.KARTHIK, Advocate (SR-8956[F] dated 27/02/2020), 8955

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KK/09.03.2020/4P-10C