IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.28335 to 28337 of 2010
and
W.M.P.Nos.1, 1 and 1 of 2010

M/s.S.C.Shah and Company Private Ltd,
Represented by its Director,
No.518, Anna Salai,
Chennai - 600 018. ... Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (CT),
T.Nagar (East) Assessment Circle,
Chennai - 600 028. ... Respondent in all W.Ps.

Prayer in W.P.No.28335 of 2010: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the impugned proceedings of the Respondent issued in TIN 33551561392/2006-2007 dated 29.10.2010 and quash the same as the levy of tax on the incentive/discount received from the vendors by adding the same to the petitioner's taxable turnover is untenable in law.

Prayer in W.P.No.28336 of 2010: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the impugned proceedings of the Respondent issued in TIN 33551561392/2007-2008 dated 29.10.2010 and quash the same as the levy of tax on the incentive/discount received from the vendors by adding the same to the petitioner's taxable turnover is untenable in law.

Prayer in W.P.No.28337 of 2010: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the impugned proceedings of the Respondent issued in TIN 33551561392/2008-2009 dated 29.10.2010 and quash the same as the levy of tax on the incentive/discount received from the vendors by adding the same to the petitioner's taxable turnover is untenable in law.

For Petitioner : Mr.P.Rajkumar
(in all W.Ps)

For Respondents: Mr.M.Hariharan,
(in all W.Ps) Additional Government Pleader

O R D E R

By this common order, all these three writ petitions have been disposed of.

2.In all these writ petitions, the petitioner has challenged the impugned order passed by the respondent for the Assessment Years 2006-2007 and 2007-2008 and 2008-2009. Challenge to the impugned order is based on the main submissions that the impugned orders have been passed without following principles of natural justice.

3.The learned counsel for the petitioner further submits that one of four issues involved in these Assessment Years, relates to the reversal of input tax credit availed by the petitioner.

4.During the respective Assessment Years, credit was sought to be denied in terms of Section 19(20) of the TNVAT Act, 2006 w.e.f 19.08.2010 and thereafter with retrospective effect from 01.01.2007 interms of TN Act, 42 of 2010.

5.The learned counsel for the petitioner submits that the petitioner availed inputs tax credit as per the Section 19 of the TNVAT has it stood during the period in dispute Rule 10(6)(b)(ii)(C) of the TNVAT Rules, 2007.

6.He submits that the petitioner is engaged in sale of consumer durable goods such as TV, Washing Machine etc. It is the case of the petitioner that the manufacturers and wholesale dealers passed on various kinds of incentives and discounts to petitioner. This according to the respondent impacted the credit availed on the goods which had already been sold.

7.The learned counsel for the petitioner submits though the amendement to Section 19(20) was unsuccessfully challenged before this Court Jayam & Co Vs. Assistant Commissioner (CT) Main Amaindakarai Assessment Circle, Chennai and An Others (And Other Cases) reported in [2013] 65 VST 260 (Mad), the said decision was partly reserved by the Hon'ble Supreme Court in Jayam & Co Vs. Assistant Commissioner and another reported in [2016] 96 VST 1 (SC).

8.He further submits that while upholding the constitutional validity of amendement to Section 19(20) of the TNVAT Act, the Hon'ble Supreme Court has ultimately concluded that no retrospective operation can be given as its seeks to create liability. The learned counsel for the petitioner drew my attention to the following passage from decision of the Hon'ble

Supreme Court in Jayam & Co Vs. Assistant Commissioner (CT) Main Amaindakarai Assessment Circle, Chennai and An Others (And Other Cases), [2016] 96 VST 1 (SC) which reads as under:

> 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 amendement 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 no 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 pruchase 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 release, 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 amendement, 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 1,2007 to August 19, 2010. Thus, while upholding the vires of sub-section (20) of Section 19, we set aside and strike down Amendement Act 22 of 2010 whereby this amendement was given retrospective effect from January 1, 2007.

9.The learned counsel for the respondent submits that the decision of the Hon'ble Supreme Court has also attained finality as far as reversal of validity credit availed for the Assessment years involved in the present writ petition.

10.In view of the same, the impugned order passed by the respondent, to the extent it seeks to be recover ITC under Section 19(20) of the TNVAT Act, for the period prior to 19.08.2010 stands set aside.

11.However, it is noticed that there are other issues also in the impugned order. |since the impugned order has been passed without following principles of natural justice by affording a reasonable opportunity of being heard, these orders are set aside to that extent and the cases are remitted back to the respondent to pass a speaking order within a period of three months from the date of receipt of a copy of this order.

12.The petitioner shall file a additional representation/reply if any within a period of one month from the date of receipt of a copy of this order. On such receipt, the respondent shall pass speaking order. The petitioner shall also heard in person or through Video Conferencing by the respondent.

13.Writ Petition stands partly allowed with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Assistant Commissioner (CT),
T.Nagar (East) Assessment Circle,
Chennai - 600 028.

+3 CCS to Mr.P.Rajkumar, Advocate sr 6536, 6537, 6538.
+1 Cc to The Special Government Pleader(T) sr 6355.

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and
W.M.P.Nos.1, 1 and 1 of 2010

AAB(CO)
SP(19/03/2021)