IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.28338 and 28339 of 2010
and
M.P.Nos.1 and 1 of 2010

M/s.Raj Enterprises,
Represented by its Proprietrix,
Guru Misri Complex A-6,
136/2, Govindappa Street,
Chennai - 600 001. ... Petitioner in both W.Ps.

Vs.

The Assistant Commissioner (CT),
Sowcarpet II Asst Circle,
Chennai - 600 001. ... Respondent in both W.Ps.

Prayer in W.P.No.28338 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 33440260925/2007-2008 dated 25.11.2010 and quash the same as the proposal to add the discount received from the vendors to the turnover of the petitioner and assess the same.

Prayer in W.P.No.28339 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 33440260925/2008-2009 dated 25.11.2010 and quash the same as the proposal to add the discount received from the vendors to the turnover of the petitioner and assess the same.

For Petitioner : Mr.P.Rajkumar
(in both W.ps)

For Respondent : Mr.M.Hariharan (in both W.ps)
Additional Government Pleader
(Tax)

C O M M O N   O R D E R

These Writ Petitions have been filed by the petitioner to challenged the impugned notice issued to the petitioner under Section 27 of the TNVAT Act, 2006 seeking to recover the input tax credit availed by the petitioner to the Assessment years 2007-2008 and 2008-2009. The issues in both the writ petitions are on account for amendment to the section 19 of the TNVAT Act, filed TNVAT Act 22 of 2010 which sought to be introduced to Section 19(20) with retrospective effect earlier with effect from 19.08.2010 and subsequently, with retrospective effect from 01.01.2007 of TNVAT Act, 2010.

2.The learned counsel for the petitioner submits that the issue is no longer res integra and it is squarely covered by its decision of the Hon'ble Suprme Court in the case of Jayam and Co Vs. Assistant Commissioner and Another (2016) 96 VST 1).

3.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4.The issue is squarely coverd by the decision of the Hon'ble Supreme Court in the case of Jayam and Co Vs. Assistant Commissioner and Another (2016) 96 VST 1) wherein it has been held as under:

> ''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 unforseeable 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.950. 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.Therefore, these writ petitions filed by the petitioner challenging the impugned notice seeking to demand amounts under Section 19(20) of the TNVAT Act, 2006 are liable to be quashed.

6.Writ petitions stands allowed accordingly. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Sowcarpet II Asst Circle,
Chennai - 600 001.

+1cc to the Special Government Pleader Sr.6354
+1cc to Mr.P.Rajkumar, Advocate Sr.6540

W.P.Nos.28338 and 28339 of 2010
and
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srg 02/03/2021