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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.40116 of 2015, 28526, 37784, 38518 to 38520
& 43963 of 2016 and 2521 of 2017
and M.P.No.1 of 2015
and W.M.P.Nos.24631, 32378, 32379, 32999
& 33000 to 33004, 37788 of 2016
and W.M.P.No.2490 of 2017

Tvl.SREI Equipment Finance Pvt. Ltd.,
Represented by the Authorized
signatory/Associate Vice-President,
Rajesh Kumar Dhawan,
290, Peters Road,
Chennai 600 014. .. Petitioner in W.P.No.40116/2015

Tvl.SREI Equipment Finance Pvt. Ltd.,
Represented by the Authorized
signatory/Chief Manager,
Mr.Tamojoy Dasgupta,
290, Peters Road,
Chennai 600 014. .. Petitioner in W.P.No.28526/2016

Tvl.SREI Equipment Finance Pvt. Ltd.,
Represented by the Authorized
signatory/Chief Manager,
Rajesh Kumar Dhawan,
290, Peters Road,
Chennai 600 014. .. Petitioner in W.P.No.37784/2016,
38518/2016, 38519/2016, 38520/2016

Tvl.Brandgalli
No.11, MES Road,
3rd Cross Street,
East Tambaram,
Chennai 600 073. .. Petitioner in W.P.No.43963/2016

Tvl.SREI Equipment Finance Pvt. Ltd.,
Represented by the Authorized
signatory/Sr.Vice President,
Jaidip Basu
290, Peters Road,
Chennai 600 014. .. Petitioner in W.P.No.2521/2017



Vs.

The Assistant Commissioner,
Royapettah Assessment Circle,
Station: 46, Greenways Road,
Chennai 600 028.

.. Respondent in W.P.Nos.40116/2015,
28526/2016, 37784/2016, 38518/2016,
38519/2016, 38520/2016 and 2521/2017

The Commercial Tax Officer,
Selaiyur Assessment Circle,
No.3, Sriram Nagar Road,
Rajeswari Nagar Extension,
Velacherry Main Road,
Selaiyur, Chennai-600 073.

.. Respondent in W.P.Nos.43963/2016

Common Prayer: Writ Petitions filed under Article 226 of the
Constitution of India, to issue a Writ of Certiorari, calling for
the records comprised in impugned order in

- (i) TIN No.33060721690/2013-14 dated 15.10.2015 (WP.No.40116/2015)
- (ii) TIN No.33060721690/2013-14 dated 27.07.2016 (WP.No.28526/2016)
- (iii) TIN No.33060721690/2011-12 dated 15.5.2015 (WP.No.37784/2016)
- (iv) TIN No.33060721690/2012-13 dated 22.04.2015 (WP.No.38518/2016)
- (v) TIN No.33060721690/2010-11 dated 22.04.2015 (WP.No.38519/2016)
- (iv) TIN No.33060721690/2009-10 dated 22.04.2015 (WP.No.38520/2016)

Prayer in W.P.No.43963 of 2016:

Writ Petition filed under Article 226 of the Constitution of
India, to issue a Writ of Certiorari calling for the records
connected with the impugned order of the respondent dated
28.11.2016 issued in respect of TIN No.33850948381/ 2014-15 of
the petitioner pertaining to the assessment year 2014-15 and to
quash the same holding the same to be unconstitutional without
the authority of law and excessive besides being without
jurisdiction.

Prayer in W.P.No.2521 of 2017:

Writ Petition filed under Article 226 of the Constitution of
India, to issue a Writ of Prohibition, Prohibiting /the
respondent from proceeding further with respect to the notice in
TIN NO.33060721690/ 2014-15 dated 14.12.2016 on the file of the
Respondent herein and quash the same.



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(In W.P.Nos.40116 of 2015, 28526, 37784,
38518 to 38520 and 2521 of 2017)

For Petitioner : Mr.AR.L.Sundaresan
(Senior Counsel)
for M/s.Mohammed Shaffiq

For Respondent : Mr.V.Veluchamy
(Government Advocate)

(In W.P.No.43963 of 2016)

For Petitioner : Mr.N.Viswanathan

For Respondent : Mr.V.Veluchamy
(Government Advocate)

C O M M O N O R D E R

The two Writ Petitions in W.P.No.28526 of 2016 and 2521 of 2017 are filed challenging the notices dated 27.07.2016 and 14.12.2016 respectively. The other Writ Petitions are filed challenging the assessment orders.

2.The core issue raised in all these Writ Petitions are whether the benefit of input tax credit is to be extended in respect of the transactions occurred prior to the issue of amendment in the Tamil Nadu Act 5 of 2015.

3.The learned Senior Counsel appearing on behalf of the petitioners mainly contended that the amendment was effected by way of rectification of an anomaly and therefore, cannot be construed as a new policy. Thus, the benefit of Input Tax Credit granted pursuant to the amendment is to be extended so as to cover the transactions took place prior to the insertion of the amendment.

4.The learned Senior Counsel contended that the issue involved in these Writ Petitions were already dealt with elaborately by the Madurai Bench of the Madras High Court in a batch of Writ Petitions led by W.P.(MD).No.15103 of 2015 and the said judgment was pronounced on 30.08.2019. Further, the respondent department has also not preferred any further appeal challenging the said judgment and therefore, the judgment became final and the said benefit is to be extended to all these petitioners.



5. The learned counsel for the respondent could not be able to object the said contentions raised on behalf of the writ petitioners. Thus, this Court is inclined to follow the decision in the case cited supra. The relevant paragraphs of the said judgment are extracted hereunder:

"7. The claim of the assessee/petitioner was that with the substitution of sub clause (v) of Section 19(2), the benefit of ITC was available in respect of inter-State transactions whether covered by C-Form or not, in terms of both Section 8(1) and (2) of the CST Act. In short, the lis for consideration before me is 'whether the provisions of Section 19(2)(v) of the Tamil Nadu Value Added Tax Act, 2006 as amended by the Tamil Nadu Value Added Tax Act (Amendment Act, 2015) are retrospective and would apply to earlier periods of assessment or prospective, applying to the period commencing 01.04.2015 only'.

.....

18. An understanding of the provisions of Section 8 of the CST Act, both sub-sections (1) and (2), is required, to examine the purpose of the substitution and to determine whether such substitution was intended to take effect from the date of inception of the enactment or the date of amending Act and the provision is thus extracted below: 8. Rates of tax on sales in the course of inter-State trade or commerce.— (1) Every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall be three percent, of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower: Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this sub-section. (2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within subsection (1), shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State.



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19. Section 8(1) of the CST Act provides the benefit of concessional rate of tax, upon production of a statutory Declaration form, to an interstate transaction with a registered dealer, and relating to specified goods. Section 8(2) stipulates that an interstate transaction with an unregistered dealer shall be visited with the same rate of tax as applicable to a domestic transaction involving identical goods. While Section 19(2)(v) extended input tax credit in respect of the transaction under Section 8(1), the same benefit was unavailable to the identical transaction with an unregistered dealer, taxable in terms of Section 8(2) of the CST Act. Though the benefit of ITC was initially restricted as an inducement to dealers to transact with registered dealers alone, Legislature has broadened, in its wisdom, the grant of benefit of ITC to transactions with unregistered dealers as well, albeit in 2015. Having taken such a decision in principle, there is no rhyme or reason to restrict the benefit only from the date of substitution. Such restriction would discriminate against transactions under Section 8(2) for the prior period, apart from leading to a dichotomy in the manner in which transactions in terms of Section 8 (2) pre and post 01.04.2015 are assessed to tax.

20. It is also not the case of the revenue that the amendment has been propelled in 2015 for a specific reason or logic and the inevitable conclusion I am led to is that legislature corrected an anomaly in 2015 by way of the amendment in question, bringing transactions under Section 8(2) also within the beneficial sweep of 19(2)(v).

21. Since the substitution in the present case only seeks to set right an anomaly it necessarily has to be effective from the date of inception of the Act itself, retrospectively.

22. These Writ Petitions are allowed and the issue framed for resolution is answered in favour of the petitioners. No costs. Connected Miscellaneous Petitions are closed."



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6. In view of the ratio laid down in the judgment cited supra, the impugned orders in all these Writ Petitions are quashed and the Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Assistant Commissioner,
Royapettah Assessment Circle,
Station: 46, Greenways Road,
Chennai 600 028.

2. The Commercial Tax Officer,
Selaiyur Assessment Circle,
No.3, Sriram Nagar Road,
Rajeswari Nagar Extension,
Velachery Main Road,
Selaiyur, Chennai-600 073.

+2ccs to Mr.N.Viswanathan, Advocate (SR No.28281)

+1cc to Special Government Pleader (Taxes) (SR No.28480)

W.P.Nos.40116 of 2015, 28526, 37784,
38518 to 38520 & 43963 of 2016 and 2521 of 2017

PL (CO)
PR (12/08/2021)