IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2021

CORAM:

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NOS.5704 & 5705 OF 2015
AND
M.P.NOS.1 & 1 OF 2015

M/s.Meenakshi Industries
rep by its Partner Jayesh Agarwal
S.R.No.9/2B, T.Pidaripattu Village,
T.V.Malai Main Road,
Thirumangalam Post, Villupuram Taluk. .. Petitioner in both WPs.

Vs

The Assistant Commissioner of (CT)
Villupuram – II Assessment Circle,
Master Plan Complex (Collector Office Complex),
Villupuram – 605 602. .. Respondent in both WPs.

PRAYER in WP.No.5704/2015:

This Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records on the file of the respondent in TIN:33944702340/2013-2014 dated 13.02.2015 and quash the same as illegal, contrary to provisions of TNVAT Act and discriminatory and violative of Article 14, 301 and 304 (a) of the Constitution of India.

PRAYER in WP.No.5705/2015:

This Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records on the file of the respondent in CST.389639/2013-14 dated 13.02.3015 and quash the same as illegal and contrary to provisions of the CST Act read with TNVAT Act and discriminatory and violative of Article 14, 301 and 304(a) of the Constitution of India.

For Petitioner : Mr.T.Pramodkumar Chopda

For Respondent : Mr.V.Nanmaran
Government Advocate
..in both WPs.

COMMON ORDER

The relief sought for in these present writ petitions are to quash the proceedings of the respondent in TIN:33944702340/2013-2014 dated 13.02.2015 and CST.389639/2013-14 dated 13.02.3015

2.The learned counsel appearing on behalf of the petitioner made a submission that the facts, as narrated in the present writ petitions, are similar to that of the facts already considered by the Hon'ble Division Bench of this Court in the case of Patina Gold Ornaments Pvt. Ltd. vs. Assistant Commissioner (CT), Park Road Circle, Erode. The issue raised, regarding the validity of the assessment order, has been decided in favour of the assessee in the said case. The Hon'ble Division Bench has elaborately considered the issue and the present writ petition is also falling under the findings given by the Hon'ble Division Bench of this Court in the case cited supra. The said case is reported in 2017 SCC OnLine Mad 29013 and the relevant paragraphs of the judgment of the Hon'ble Division Bench are extracted hereunder:-

> "30. Therefore, having regard to the foregoing discussion, we are of the view that Section 19(2)(ii) of the 2006 Act is invalid to the extent that it denies availment of ITC in respect of those units which despatch tax suffered raw materials i.e. bullion / worn-out jewellery for conversion into final product (i.e. jewellery) outside the State which upon conversion are received back and sold within the State of Tamil Nadu. Thus, according to us, the mere fact that the manufacturing unit is located outside the State of Tamil Nadu, cannot be the basis, for denial of ITC, under Section 19(1) of the 2006 Act. Clause (ii) of Sub-Section (2) of Section 19 of the 2006 Act is, thus, declared bad in law.
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> 31. For the very same reason, we also hold that the respondents cannot retain ITC on goods purchased within the State, by invoking provision of Section 19(4) of the 2006 Act to the extent of rate of tax provided therein i.e., 3% (which was the rate provided therein at the relevant point of time), as that would make the relief inefficacious since the subject goods i.e. bullion / worn-out jewellery on which tax credit was sought by the writ petitioner was imposed at the rate of 1%.

32. The writ petition is, thus, allowed in the aforesaid terms, leaving parties to bear their own costs.”

3.In view of the orders of the Hon'ble Division Bench, cited supra, the present writ petitions are to be considered. In respect of the other issues raised in these writ petitions, the petitioner is at liberty to prefer objections, if any, to the show cause notice.

4.Accordingly, the impugned orders passed by the respondent in proceedings in TIN:33944702340/2013-2014 dated 13.02.2015 and CST.389639/2013-14 dated 13.02.3015, are quashed and these writ petitions stand allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pns

To

The Assistant Commissioner of (CT)
Villupuram – II Assessment Circle,
Master Plan Complex (Collector Office Complex),
Villupuram – 605 602.

+1cc to the Special Government Pleader(Taxes) S.R.No.44942
+1cc to Mr.T.Pramod Kumar Chopda, Advocate, S.R.No.44408

W.P. Nos.5704 & 5705 of 2015
and
M.P.Nos.1 & 1 of 2015

RLD(CO)
PM/28/09/2021