

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	09.02.2021
Pronounced On	09.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.31730 of 2014

and

M.P.No.1 of 2014

(Through Video Conferencing)

Infra Engineers India
Rep. by its Proprietrix
P.Vaishnavi
No.5, Nimmo road, Santhome,
Chennai - 600 004.

... Petitioner

Vs.

The Commercial Tax Officer,
Mandaveli Assessment Circle,
No.46, Greenways road,
Chennai - 600028.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in CST/958439/2011-12 dated 31.07.2014 and the consequential proceeding in CST/958439/2011-12 dated 25.09.2014, quash the same and consequently direct the respondent to adjust the excess Input Tax Credit available under VAT Act towards the dues under the Central Sales Tax Act.

For Petitioner : Mr.S.Ravee Kumar

For Respondent : Mr.R.Swarnavel, G.A.

O R D E R

The petitioner has challenged the impugned order dated 31.07.2014 passed by the respondent under Central Sales Tax Act, 1956 and order dated 25.09.2014 of the respondent dismissing the application filed by the petitioner under Section 84 of the Tamil Nadu Value Added Tax Act, 2006.

2. The impugned orders have been passed for the Assessment Year 2011-2012 under the provisions of the Central Sales Tax Act, 1956.

3. Earlier an assessment order dated 10.01.2014 was passed by the respondent for the Assessment Year 2011-2012. In the aforesaid assessment order, a sum of Rs.47,51,321/- was determined as the tax payable by the petitioner.

4. The petitioner was however allowed to adjust an amount of Rs.19,25,287/- from the Input Tax Credit earned under the Tamil Nadu Value Added Tax Act 2006. Thus, the net tax to be paid by the petitioner was determined as Rs.28,26,034/-.

5. Meanwhile, the assessment for the Assessment Year 2010-2011 under the provisions of the Central Sales Tax Act, 1956 was also completed on 29.11.2013, wherein, it was determined that the petitioner was in arrears of a sum of Rs.15,01,080/- for the said Assessment Year.

6. Under these circumstances, a Notice was issued to the petitioner and called upon the petitioner to pay arrears amount of Rs.34,24,084/- [15,01,080 + 28,26,034 - 2,00,000 - 7,03,030] for these two Assessment Years. The aforesaid arrears was arrived after setting off the subsequent payments of Rs.2,00,000/- and Rs.7,03,030/- by the petitioner.

7. The petitioner therefore agreed to adjust another amount of Rs.9,90,815/- from its unutilised Input Tax Credit as per tax return of March, 2012. The petitioner further stated that it had made further payments for a sum of Rs.1,65,342/- and therefore stated that the net tax payable by the petitioner for the Assessment Year 2011-12 was only Rs.9,74,520/- and therefore requested the respondent to issue a revised Notice in Form 3 for the aforesaid sum of Rs.9,74,520/-.

8. Thereafter, the petitioner filed an application under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 on 10.04.2014 to revise the assessment order dated 10.01.2014.

9. By an order dated 21.04.2014, the original assessment order dated 10.01.2014 for the Assessment Year 2011-12 was revised. The respondent re-determined the tax payable by the petitioner as Rs.19,67,207/- by re-computing the gross tax due as Rs.40,60,869/- less Rs.19,25,287/- from the Input Tax Credit and determined the net balance payable by the petitioner as Rs.19,67,207/-.

10. The petitioner claims to have adjusted an amount of Rs.23,31,952/- being the Input Tax Credit available for

adjustment under Rule 10(10)(b) of the Tamil Nadu Value Added Rules 2007 from its online monthly return of February, 2014. After adjustment of the aforesaid amount, according to the petitioner, there was an excess payment of Rs.4,12,295/- which was to be refunded.

11. In the above background, a fresh notice dated 03.06.2014 under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 was issued to the petitioner to revise the assessment order dated 21.04.2014.

12. Pursuant to the above notice dated 03.06.2014 issued to the petitioner, the first mentioned impugned order dated 31.07.2014 in CST/958439/2011-12 has been passed by the respondent. The aforesaid order deals with several issues including adjustments of Input Tax Credit.

13. In the above notice dated 03.06.2014, the respondent proposed a re-determination of the gross tax due from the petitioner as Rs.40,60,869/- and restricted the adjustment of Input Tax Credit to Rs.4,43,946/- from Rs.19,25,287/- which earlier allowed vide original assessment order dated 10.01.2014 and in the revised assessment order dated 21.04.2014 passed under Section 84 of the Act.

14. In the notice, it was stated that under Section 19(5) of the Tamil Nadu Value Added Tax Act, 2006, the petitioner was entitled to adjust only a sum of Rs.4,43,946/- being 2% of sales covered by C Form and the excess of input tax credit debited for a sum of Rs.14,81,341/- [19,25,287 - 4,43,946] which was originally paid / adjusted by the petitioner was required to be paid back and thus, the petitioner was liable to pay a sum of Rs.36,16,923/- as tax.

15. Since a sum of Rs.1,68,375B/- was paid through bank transfer, the net tax due from the petitioner was re-determined as Rs.34,84,548/- [Rs.36,16,923- Rs.1,68,375].

16. Against the said order, the petitioner filed an application under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 on 01.09.2014 to revise the said order of re-assessment dated 31.07.2014. The said application has resulted in the second mentioned impugned order dated 25.09.2014. The respondent has rejected the application filed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 as made applicable to assessment under Central Sales Tax Act, 1956.

17. It is the contention of the petitioner that adjustment of input tax credit against tax liability under the provisions of the Central Sales Tax Act, 1956 is permissible under Rule 10

(10(b) of the Tamil Nadu Value Added Tax Rules, 2007.

18. The learned counsel for the petitioner placed reliance on the following decisions of this Court in

- i. Tvl.Mahaajay Spinners India Pvt. Ltd., Vs. The Commercial Tax Officer, Salem, in W.P.No.28275 of 2016.
- ii. M/s.Sri Laxmi Exports Vs. The Assistant Commissioner (CT), Madurai, in W.P. (MD) Nos.9674 to 9679 of 2014.
- iii. Tvl.Shakthi Tech Vs. State Tax Officer, Coimbatore in W.P.Nos.2912 and 2913 of 2020.

19. Defending the impugned order, it is the contention of the learned counsel for the Commercial Tax Department that the petitioner has an alternate remedy before the Deputy Appellate Commissioner and places reliance on the decision of the Hon'ble Supreme Court in ALD Automobiles Vs. Assistant Commissioner (CT), (2018) SCC OnLine SC 1945.

20. The learned counsel for the respondent/Commercial Tax Department further submits that the Input Tax Credit of Rs. 23,31,952 /- which has been adjusted by the petitioner has lapsed in absence of a valid claim for input tax credit within time. He submits that as per Section 19(11) of the TNVAT Act, 2006, in case, a registered dealer fails to claim Input Tax Credit in respect of any transaction of taxable purchased in any month, he shall make claim before the end of the financial year or before ninety days from the date of purchase, whichever is later.

21. In the operative portion of the first mentioned impugned order dated 31.07.2014, it has been held as under:-

"Limitation for adjustment

On verification of the returns for the month of October 2010 to March 2011 the first sellers whom the assesseees from whom they have purchased goods have not paid the Sales Tax to the Department. The provisions of the Sec.19 of the Tamil Nadu Value Added Tax Act, 2006, contemplate that the registered dealer, who claims input tax credit shall establish that the tax due on such purchases has been paid by him in the manner prescribed. The assesseees failed to reply to the notice issued for the year 2010-11 under the TNVAT Act, 2006. When they failed to produce the documentary evidences,

the claim of input tax credit adjustment cannot be possible. Consequently the question of adjustment of the input tax credit for the arrears under CST Act 56 does not arise.

In this case Tvl.Infra Engineers India has not made the claim in the claim in Form W for refund of sales tax within the stipulated time as per Sec.18(2) of the Tamil Nadu Value Added Tax Act, 2006. They have not adjusted the input tax credit also in time before the financial year 2010-2011 and 2011-12 and 2012-13 and allowed the same as time barred. Thus the claim of input tax credit is barred by limitations prescribed under sec.18(2) of the TNVAT Act, 2006. Therefore it is proposed to reject the claim of input tax credit of Rs.23,31,952/- as they have not adjusted the same under the Tamil Nadu Value Added Tax Act, 2006. In the circumstances the input tax claim of Rs.23,31,952/- has lapsed to Government. Therefore the lapsed amount cannot be adjusted towards arrears of sales tax that too for the arrears under the Central Sales Tax Act 56 for the interstate sales effected without C declaration forms for the year 2010-11 and 2011-12 under the CST Act 56.

Since there is limitation prescribed as within the same financial year as laid down under Sec.18(3) of the Tamil Nadu Value Added Tax Act, 2006, the claim of adjustment is not valid in law.

In the case of USA Agencies Vs. The Commercial Tax Officer Attur (Rural) Assessment Circle reported in 2013-14(19) TNCTJ page 149 the High Court observed as follows W.P.Nos.902, 1202, 2016, 2233, 3732, 4329 to 4331, 5766, 20302, 25124 and 26281 of 2009; dated 17.07.2013 the High Court observed as follows:-

"32.Like wise as per Section 19(5)(c), no Input Tax Credit shall be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of Inter-State trade or commerce falling under Section 8(2) of Central Sales Tax Act. The reason being in respect of such sales effected outside the State of Tamilnadu, no tax being paid to the State of Tamil Nadu."

37. In Mohammed Haji Manachithodi Agencies Vs State of Kerala [2012(3) KLT (SN) 17], the Division Bench of the Kerala High Court has held that the set-off is in the nature of a concession and no dealer has a right to claim input tax credit independent of the provision of Section 11 of the Kerala VAT Act.

38. Provision for availing concession is to be strictly construed and followed:-

Input tax credit, which is in the nature of concession or indulgence, could be availed only in the manner prescribed under Section 19. Law is well settled that the person, who claims exemption or concessional rate, must obey and fulfill the mandatory requirements exactly. Unless there is strict compliance with the provisions of the statute, the registered dealer is not entitled to claim "Input tax credit". Apart from Section 19 of TNVAT Act, there is no independent right to claim "Input tax credit". When Section 19(11) stipulates time frame for a claim of Input tax credit, the registered dealer must strictly follow the mandatory requirements of the provision.

39. The availment of Input Tax Credit is creature of Statute. The concession of Input Tax Credit is granted by the State Government so that the beneficiaries of the concession are not required to pay the tax or duty which they are otherwise liable to pay under TNVAT Act. While so extending the concession, it is open to the Legislature to impose conditions. Section 19(11) is one such condition imposed making it mandatory for the registered dealer to claim Input Tax Credit before the end of the financial year or before ninety days from the date of purchase, whichever is later. The entitlement to claim Input Tax Credit is created by TNVAT Act and the terms on which Input Tax Credit can be claimed must be strictly observed."

In view of the above decision, the contentions have no force.

Tvl. Infra Engineering India are not eligible for claiming the same. In the circumstances Taxable turnover is re-determined at Rs., 531,08,287/- as

per the provisions of Sec.9(2-A) of the Central Sales Tax Act 1956 read with Sec.27 of the Tamil Nadu Value Added Tax Act 2006.

Turnover	Rate of tax	Tax due Rs.
22124163-00	2%	442483-00
73093-00	2%	1462-00
36240-00	5%	1812-00
15059675-00	12.5%	1882459-00
3983521-00	14.5%	577610-00
2289124-00	4%	91565-00
2139575-00	5%	106979-00
5846048-00	12.5%	7,30,756-00

22. Challenging the impugned orders, the learned counsel for the petitioner submits that the credit availed by the petitioner under the provisions of the TNVAT Act, 2006 has not been reversed. It is submitted that therefore the adjustment of tax liability under Central Sale Tax Act, 1956 by the petitioner cannot be disturbed.

23. It is further submitted that the petitioner is not claiming refund of the Input Tax Credit on the zero rated sales effected by it. On the other hand, the petitioner has merely adjusted the tax liability against the amount determined on the taxable turn over determined in the Assessment Orders under Central Sales Tax Act, 1956.

24. It is submitted that Section 18 of the TNVAT Act, 2006 contemplates 2 situations, i.e. adjustment of Input Tax Credit towards discharge of tax liability and refund of tax borne on zero rated sale. In this case, the petitioner has adjusted such Input Tax Credit as per Rule 10(9)(a) of the Central Sales Tax (Tamil Nadu) Rules, 1957.

25. The learned counsel further submits that question of filing of Form-W for refund of Input Tax Credit does not arise as the petitioner is in a position to adjust the excess credit towards tax its liability.

26. The learned counsel for the respondent Commercial Tax submits that this Writ Petition lacks merits. It is submitted that since the petitioner had failed to claim Input Tax Credit

in time, the adjustment made subsequently by the petitioner towards tax liability for the Assessment Year 2011-2012 under the CST Act, in terms of Rule 5(3-A) of the Tamil Nadu CST Rules, 1957 was impermissible.

27. He therefore submits that there is no error in the impugned order passed by the respondent and therefore prays for dismissal of the present Writ Petition.

28. Though several issues fell for consideration before the respondent in the application filed by the petitioner under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, the issue that survives for consideration/adjudication before this court is whether the petitioner was entitled to adjust Input Tax Credit availed under Tamil Nadu Value Added Tax Act, 2006 against its tax liability under the provisions of the Central Sales Tax Act, 1956?

29. The second issue that falls for consideration in this Writ Petition is whether the respondent was justified in disallowing adjustment of the input tax credit amounting to Rs.23,31,952/- from the petitioner's online monthly return of February 2014 towards the arrears of the tax liability for the Assessment Year 2011-12 on the ground that it is not open to the petitioner to adjust the same without filing a proper refund claim within time in the light of Section 18(3) of the Tamil Nadu Value Added Tax Act, 2006. The said provisions reads as under:-

18. Zero-rating .-.

(1) The following shall be zero rate sale for the purpose of this Act, and shall be eligible for input tax credit or refund of the amount of the tax paid on the purchase of goods specified in the First Schedule including capital goods, by a registered dealer in the State, subject to such restrictions and conditions as may be prescribed:-

(i) A sale as specified under sub-section (1) or (3) of section 5 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956);

(ii) Sale of goods to any registered dealer located in Special Economic Zone in the State, for the purpose of use in manufacture, trading, production, processing, assembling, packaging or for use as packing material or packing accessories if such registered dealer has been authorized to establish such units by the

authority specified by the Central Government in this behalf; and

(iii) Sale of goods to International Organizations listed out in the Fifth Schedule.

(2) The dealer, who makes zero rate sale, shall be entitled to refund of input tax paid or Payable by him on purchase of those goods, which are exported as such or consumed or used in the manufacture of other goods that are exported as specified in sub-section (1), subject to such restrictions and conditions as may be prescribed.

(3) Where the dealer has not adjusted the input tax credit or has not made a claim for refund within a period of one hundred and eighty days from the date of making zero rate sales accrual of such input tax credit, such credit shall lapse to Government.

30. The petitioner has claimed that it has effected zero rated sale within the meaning of Section 18 of the Tamil Nadu Value Added Tax Act, 2006 and therefore adjusted a sum of Rs.23,31,952/- from its Input Tax Credit in annual return for Assessment Year 2013-2014 as against the gross tax due for a sum of Rs.40,60,869/- for Assessment Year 2011-2012 as determined by the respondent vide order dated 31.07.2014.

31. It is noticed that in first mentioned impugned order, the gross tax payable the petitioner has been re-determined as Rs.40,60,869/-. Adjustment of input tax credit has been however restricted to Rs.4,43,946/- as against Rs.19,25,287/- which was earlier allowed.

32. I shall first deal with the first issue relating to availability of input tax credit under Section 19(5) of the Tamil Nadu Value Added Tax Act, 2006 and the claim of the petitioner for adjustment of the aforesaid input tax credit under the provisions of the Central Sales Tax Act, 1956 read with Rule 3A of the Central Sales Tax (Tamil Nadu) Rules, 1957.

33. On the one hand, Section 19(1) and (2) of the Tamil Nadu Value Added Tax Act, 2006 as it stood during the material period allowed such credit, while on the other hand, Section 19(5)(c) of the Tamil Nadu Value Added Tax, 2006 contained a restriction.

34. Section 19(5)(c) of the Tamil Nadu Value Added Tax Act, 2006 dis-allows input tax credit only if the transaction was covered by Section 8(2) of Central Sales Tax Act, 1956. Section 8(2) of the Central Sales Tax Act, 1956 deals with sale to a person other than a registered dealer.

35. It thus implies that only where there was a sale to a registered dealer in the course of inter-State trade and commerce, Input Tax Credit was available under Tamil Nadu Value Added Tax, 2006. These provisions from the Tamil Nadu Value Added Tax, 2006 are reproduced below:-

19. Input tax credit.- (1) There shall be input tax credit of the amount of tax paid under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule: (2) Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of — (i) re-sale by him within the State; or (ii) use as input in manufacturing or processing of goods in the State; or (iii) use as containers, labels and other materials for packing of goods in the State; or (iv) use as capital goods in the manufacture of taxable goods; (v) sale in the course of inter-State trade or commerce falling under sub-sections (1) and (2) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956); (vi) agency transactions by the principal within the State in the manner as may be prescribed.	Rule 19 (5) (c): No input tax credit shall be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of inter-state trade or commerce falling under sub-section (2) of section 8 of the Central Sales Tax Act, 1956.
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36. There is an apparent contradiction between Section 19(5) (c) and Section 19(2)(v) of the Tamil Nadu Value Added Tax Act, 2006. While, Sub-Section (2)(ii) and Sub-Section (2)(v) to Section 19 of the Tamil Nadu Value Added Tax Act, 2006 seems to allow credit without any limitation, Section 19(5)(c) of the said Act puts a restriction from availing of Input Tax Credit on goods sold as such or used in the manufacture of other goods and sold in the course of inter-State trade and commerce falling under Section 8(2) of the Central Sales Tax Act, 1956.

37. In fact, earlier on 17.01.2005, a White Paper was released by the Committee of Finance Ministers before various VAT laws were enacted by the respective States. There, it was made clear that input tax credit (hereinafter "ITC") would be available to be set-off against tax liability on all intra-State and inter-State sales. Para 2.3 of the same reads as under:

"Coverage of Set-Off/Input tax credit

2.3. This input tax credit will be given for both manufacturers and traders for purchase of inputs/supplies meant for both sale within the State as well as to other States, irrespective of when these will be utilised/sold. This also reduces immediate tax liability.

Even for stock transfer/consignment sale of goods out of the State, input tax paid in excess of 4% will be eligible for tax credit."

38. However, on the eve of introduction of Tamil Nadu Value Added Tax, 2006 with effect from 01.01.2007, Rule 10(9)(a) of the Tamil Nadu Value Added Tax Rules, 2007 was inserted vide Notification No. SRO A-(a-1)/2007 [G.O. Ms. No.1, Commercial Taxes and Registration (B1), dated 1st January 2007]. Similarly, Rule 5(3-A) of the Central Sales Tax (Tamil Nadu) Rules, 1957 was inserted with effect from 01.01.2007 vide G.O.No.8 dated 01.01.2007 of the Government of Tamil Nadu. Both these Rules are reproduced below:-

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Rule 10(9)(a) of the Tamil Nadu Value Added Tax Rules, 2007	Rule 5(3-A) of the Central Sales Tax (Tamil Nadu) Rules, 1957
Input tax credit on inter-State sales shall be allowed only if Form C prescribed in the Central Sales Tax (Registration and Turnover) Rules, 1957 is filed."	Where any input tax credit is due to a dealer under Section 19 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006) in accordance with any returns required to be furnished by registered dealer under section 21 of the said Act, such dealer shall adjust tax credit towards any tax payable by him in accordance with any returns required to be furnished by him under sub-rule (2).

39. Rule 10(9)(a) of the Tamil Nadu Value Added Tax Rules, 2007 places restriction in as much as input tax credit on inter-State sales will be allowed only if Form C prescribed in the Central Sales Tax (Registration and Turnover) Rules, 1957 are filed. Rule 10(9)(a) of the said Rules was deleted only subsequently vide G.O.Ms.No.18, CT & R(B), dated 29.01.2016.

40. In other words, credit will be allowed to be adjusted against tax liability under Central Sales Tax Act, 1956 only if a dealer produced Form C prescribed in the Central Sales Tax (Registration and Turnover) Rules, 1957.

41. Rule 10(9)(a) of the Tamil Nadu Added Tax Rules, 2007 as extracted above seems to sync with Section 9(5)(c) of the Tamil Nadu Value Added Tax Act, 2006 by restricting the Input Tax Credit on inter-State sales only if Form C prescribed in the Central Sales Tax (Registration and Turnover) Rules, 1957 is filed by the dealer.

42. Only if such credit is available, it can be utilized for discharging the tax liability under Rule 5(3-A) of the Central Sales Tax (Tamil Nadu) Rules, 1957.

43. The language adopted in Rule 5(3-A) of the Central Sales Tax (Tamil Nadu) Rules, 1957 makes it clear that there is a one to one co-relation i.e. availing of input tax credit in accordance with Rule 10(9)(a) of the Tamil Nadu Added Tax Rules, 2007 and its ultimate utilization for discharging tax liability under Central Sales Tax Act, 1956 in terms of Rule 5(3-A) of the

Central Sales Tax (Tamil Nadu) Rules, 1957.

44. Thus, only if credit is available as per Rule 10(9)(a) of the Tamil Nadu Value Added Tax Rules, 2007 read with Section 9(5) of the Tamil Nadu Value Added Tax Act, 2006 as in force w.e.f. 01.01.2001, it can be adjusted / utilized for discharging tax liability under Central Sale Tax Act, 1956 under Rule 5(3-A) of the Central Sales Tax (Tamil Nadu) Rules, 1957.

45. In TVS Motor Co. Ltd. Vs. State of Tamil Nadu, (2019) 13 SCC 403, the Court had an occasion to consider the following issues answered by this Court:-

"(1) Whether Section 19(5)(c) of the TNVAT Act, 2006 and Rule 10(9)(a) of the TNVAT Rules, 2007 are ultra vires the provision of the CST Act, 1956?

(2) Whether the impugned provisions * were in violation of Articles 14, 19(1)(g) and 301 of the Constitution of India?"

(* viz. Section 19(5)(c) of the Tamil Nadu Value Added Tax Act, 2006 and Rule 10(9)(a) of the Tamil Nadu Value Added Tax Rules, 2007)

46. The Hon'ble Supreme Court in TVS Motor Co. Ltd. v. State of T.N., (2019) 13 SCC 403, answered these issues with the following observation in para 23 as follows:-

"Section 8(2) says that if the sale of goods is in the course of inter-State trade or commerce not falling within sub-section (1) the tax payable 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 and as per Explanation to Section 8 (2), for the purpose of this sub-section, a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law."

47. This Court in a batch of Writ Petitions by its order dated 29.10.2014 in Writ Petition filed by the TVS Motor Co. Ltd. and others had earlier held that right to claim ITC was not an vested right or an indefeasible right. It held that it is a benefit conferred under the Act under certain contingencies and

subject to certain conditions prescribed in the statutory scheme. Therefore, it was open to the State Legislature to provide for conditions and restrictions while extending the concession.

48. Likewise, it is also held that it was also necessary for any assessee to claim Input Tax Credit to fulfil those conditions. Thus, the provision made in the statute that unregistered dealers in other States would not be entitled to ITC was justified.

49. This High Court had accepted the specific stand of the State Government that in respect of such unregistered dealers in other States, the State of Tamil Nadu had no mechanism to prevent evasion of tax and loss of revenue caused by trade with such unregistered dealers in the State of Tamil Nadu and was of the opinion that these provisions were violative of the constitutional provisions contained in Articles 14, 19(1)(g) and 301.

50. The Hon'ble Supreme Court in *TVS Motor Co. Ltd. Vs. State of Tamil Nadu*, (2019) 13 SCC 403, observed that "Having regard to the above, we are of the opinion that the provisions of Section 19(5)(c) are to be read down by construing that those dealers who are making sales exclusively to the other State Governments (i.e. outside the State of Tamil Nadu), the said States would be deemed as registered dealers for the purposes of availing benefits of ITC. Otherwise, in such a situation, it would be difficult to hold that test of reasonable classification is met in this limited context. It becomes unnecessary to deal with other contentions of Mr Bagaria".

51. However, to come to the above conclusion, the Court in para 43 held observed, "Sub-section (5) stipulates certain contingencies where such ITC would not be admissible. There is no quarrel about clauses (a) and (b). We are only concerned with clause (c) of this sub-section which provides that ITC would not be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of inter-State trade or commerce falling under sub-section (2) of Section 8 of the Central Sales Tax Act. To put it tersely, sale by a dealer who is registered in the State of Tamil Nadu which is effected outside the State of Tamil Nadu will qualify for ITC only when the said sale is made to a registered dealer. If it is to an unregistered dealer, it would not be admissible. This classification is based on intelligible differentia having a proper rationale. Insofar as sales to unregistered dealers are concerned, that too situated outside the State of Tamil Nadu, the State would not have any mechanism to find out the genuineness of these sales. In essence, the State is putting the

condition that ITC would be admissible when Form C is given, which can be given only in those cases where sale is to a registered dealer. Prescribing such a condition in order to ensure that there is no evasion, has a rational purpose and objective. Consideration of this aspect in the context of the very nature of the ITC scheme, which is a concession and not a right, would lead us to the conclusion that it was open to the legislature to make such a provision.

52. Therefore, the petitioner was entitled to adjust the input tax credit only if such credit was available under the Section 19 of the Tamil Nadu Value Added Tax Act, 2006.

53. Both the petitioner and the respondent have not brought to the attention of the Court about the fate of assessment order passed under Tamil Nadu Value Added Tax, 2006 for the aforesaid assessment year as to whether credit was allowed to the petitioner under Section 19 of the said Act. Therefore, I do not find any merits in the present writ petition in absence of such vital information.

54. It is the stand of the respondent that Input Tax Credit of Rs.19,25,287/- which was originally allowed at the time of the original assessment order dated 10.01.2014 and re-affirmed while passing a revised assessment order dated 21.04.2014 under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 was to be restricted in the impugned order dated 31.07.2014 passed pursuant to a revision notice dated 03.06.2014 issued under Section 27 of the Tamil Nadu Value Added Tax, 2006 and in the impugned order dated 25.09.2015 passed under Section 84 of the said Act. It is not clear on what basis restricted credit was allowed to the petitioner.

55. Adjustment of Rs.23,31,952/- from and out of the balance credit available in the monthly return of the petitioner for February, 2014 is not permissible under the Scheme of the Act and the Rules as the scheme contemplates one to one co-relation between the input tax credit and its utilization.

56. If there was any zero rated sale during the subsequent years, it can only be refunded in accordance with the law to the petitioner. There is no scope for adjustment for past liabilities.

57. Therefore, if the petitioner was otherwise entitled to such refund under Section 18 of the Tamil Nadu Value Added Tax, 2006, instead of refunding the amounts to the petitioner, such amount may be allowed to be set-off against the tax liability in view of the peculiar situation arising out of subsequent development and transition to a different tax regime under the

GST Laws with effect from 01.07.2017.

58. Therefore, while dismissing this Writ Petition, I allow the petitioner to file an appeal against the impugned orders within a period of thirty days from date of receipt of a copy of this order before the appellate authority.

59. If such appeal is filed within such time before the appellate authority, the said appellate authority shall decide the case on merits in accordance with law within a period of three months from date of receipt of a copy of this order.

60. It is made clear there will be no waiver from mandatory pre-deposit of the disputed tax liability. However, Input Tax Credit which has remained unutilized under the provision of Tamil Nadu Value Added Tax, 2006 and not transferred/transitioned under GST law may be allowed to be adjusted towards mandatory pre-deposit.

61. In the result, this Writ Petition stands dismissed with the above observations. No cost. Consequently, Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

jen

To

The Commercial Tax Officer,
Mandaveli Assessment Circle,
No.46, Greenways road,
Chennai - 600028.

+1cc to Mr.S.Ravee Kumar, Advocate, S.R.No.22853
+1cc to The Special Government Pleader(Tax), S.R.No.22873

SSD(CO)
CB(14/06/2021)

W.P.No.31730 of 2014
and M.P.No.1 of 2014