IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.18760, 18762 & 18763 of 2021
&
W.M.P.Nos.20057, 20051, 20056,
20052, 20053 & 20055 of 2021

(Through Video Conferencing)

M/s. Amman Agencies,
Represented by P. Rajendran,
Partner,
75/22, Vellala Street
Chennai - 23. ... Petitioner in all W.Ps.

Vs

The Assistant Commissioner (ST),
Ayanavaram Assessment Circle,
Chennai. ... Respondent in all W.Ps.

Prayer in W.P.No.18760 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the files on the respondent in TIN:33231002169/2006-07 dated 09.07.2021 and quash the same.

Prayer in W.P.No.18762 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the files on the respondent in TIN:33231002169/2007-08 dated 09.07.2021 and quash the same.

Prayer in W.P.No.18763 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the files on the respondent in TIN:33231002169/2008-09 dated 09.07.2021 and quash the same.

For Petitioner : Mr.V.Srikanth
(in all W.Ps)
For Respondents: Mr.D.Ravichander
(in all W.Ps) Government Counsel

COMMON ORDER

These writ petitions are taken up for final disposal considering the fact that the issue is no loner res integra and is covered by the decision of the Hon'ble Supreme Court in Jayam and Co Vs. Assistant Commissioner and another [2016] 96 VST 1 SC. The Hon'ble Supreme Court while upholding the constitutional validity of Section 19(20) to the Tamil Nadu VAT Act, 2006 held that the said provision will not have retrospective operation and that it would be only prospective. The relevant portion from the decision of the Hon'ble Supreme Court in the aforesaid case reads 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 unforeseeable 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 judgment,"dealer" was entitled to ITC of Rs.10 on resale, which was paid by the dealer in view of Section 19 (20) inserted by way of amendment, 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 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 Section (20) of Section 19, we set aside and strike 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 1, 2007.

This view has been followed by this Court in several other orders. A reference was made to an order passed on 05.06.2020 in the case of M/s.Nuts N Spices Vs. The Appellate Deputy Commissioner (CT) and another decision in W.P.No.34921 of 2019 and yet another order in a batch of writ petitions in W.P. (MD).Nos.4342 of 2018 etc batch, in the case of Tvl.Visagan Enterprises Vs. The Assistant Commissioner (CT).

2.Since the issue is now fully covered by the decision of the Hon'ble Supreme Court which has also been followed by this Court, accordingly, these writ petitions stand allowed with the consequential relief to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (ST),
Ayanavaram Assessment Circle,
Chennai.

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SJ(CO)
A.SK(07.12.2021)