IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2021

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.23625 of 2014
and M.P.No.2 of 2014

M/s.Shree Ganesh Jewellery House Ltd.,
Rep., by its Manager, Mr.Manish Arora,
No.21, Ramaswamy Street,
T.Nagar, Chennai-17. .. Petitioner

-vs-

1.The State of Tamil Nadu,
Rep., by the Secretary to Government,
Commercial Taxes and Registration B(1) Department,
Fort St. George, Chennai-600 009.

2.The Special Commissioner & Commissioner of Commercial Taxes,
"Ezhilagam", Chepauk, Chennai-600 005.

3.The Assistant Commissioner (CT),
T.Nagar (South) Assessment Circle,
Chennai-600 028. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the file of the 3rd respondent herein in TIN.33491542898/2012-13 dated 31.03.2014 and quash the same.

For Petitioner : Ms.C.Rekha Kumari

For Respondents: Mr.M.Hariharan,
Additional Government Pleader (T)

ORDER

The relief sought for in the present writ petition is to quash the proceedings of the third respondent in TIN.33491542898/2012-13 dated 31.03.2014.

2.The learned counsel appearing on behalf of the petitioner made a submission that the facts, as narrated in the present writ petition, 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%.
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> 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 petition is to be considered.

4.Accordingly, the impugned order passed by the third respondent in proceedings in TIN.33491542898/2012-13 dated 31.03.2014 is quashed and the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

abr

To

1.The Secretary to Government,
The State of Tamil Nadu,
Commercial Taxes and Registration B(1) Department,
Fort St. George, Chennai-600 009.

2.The Special Commissioner & Commissioner of Commercial Taxes,
"Ezhilagam", Chepauk, Chennai-600 005.

3.The Assistant Commissioner (CT),
T.Nagar (South) Assessment Circle,
Chennai-600 028.

+1cc to Mr.C.Rekha Kumari, Advocate, S.R.No. 24537
+1cc to the Special Government Pleader(Taxes), S.R.No. 25068

W.P.No.23625 of 2014

SSV(CO)
GN(30/06/2021)