BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.4692 & 4712 of 2021
and
W.M.P.(MD)Nos.3799 & 3825 of 2021

Tvl.M-GEN POWER SYSTEMS (PVT) LTD.,
Represented by its Managing Director,
T.Marirajan, aged about 60 years,
S/o.Thirumalai Nambi,
No.63, Thiruvalluvar Nagar Main Street,
Nehru Nagar 2nd Street,
By Pass Road,
Madurai-625 010. ... Petitioner in W.P.(MD)No.4692 of 2021

Tvl.BARCOL POWER CONTROL (P) LTD.,
Represented by its Managing Director,
T.Marirajan, aged about 60 years,
S/o.Thirumalai Nambi,
No.63, Thiruvalluvar Nagar Main Street,
Nehru Nagar 2nd Street,
By Pass Road,
Madurai-625 010. ... Petitioner in W.P.(MD)No.4712 of 2021

-Vs-

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The State Tax Officer,
Madurai Rural South Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai-625 020. ... Respondents in both W.Ps.

Prayer in W.P.(MD)No.4692 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the second respondent in TIN: 33265163598/2014-15, dated 30.12.2020 and quash the same.

Prayer in W.P.(MD)No.4712 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the second respondent in TIN: 33385164017/2014-15, dated 30.12.2020 and quash the same.

For Petitioners : Mr.B.Rooban
for Mr.R.Veeramanikandan

For Respondents : Mrs.J.Padmavathi Devi
(in both W.Ps.) Special Government Pleader

COMMON ORDER

Heard the learned counsel for the petitioners and the learned Special Government Pleader for the respondents.

2.Though these two writ petitions have been filed by different assessees, the issue raised in both is one and the same. The petitioners are the registered assessees. The assessment year in both the writ petition is 2014-15. The petitioners had effected the sales of goods to the dealers outside the State with both C-Form declaration as well as without C-Form declaration. The assessing officer had chosen to reverse the input tax credit availed by the petitioner in respect of those inter-state sales that had taken place without C-Form declaration. The orders are under challenge in these writ petitions.

3.The respondents have filed a detailed counter affidavit. The stand of the respondents is that while it is true that Section 19(2)(v) of TNVAT Act underwent an amendment, the amendment came into force only with effect from 01.04.2015. The transactions in question had taken place prior to the amendment. It is also brought to my notice that un-amended Section 19(2)(v) of the Act was challenged. But its validity was upheld by the Hon'ble Supreme Court in *M/s.TVS Motor Company Ltd., Vs. The State of Tamil Nadu and others(Civil Appeal Nos.10560-10564 of 2018)*. The respondents therefore want this Court to dismiss these writ petitions in view of the aforesaid decision of the Hon'ble Apex Court.

4.I carefully considered the rival contentions and went through the materials on record.

5.It is true that the transactions in question took place during 2014-15 before Section 19(2)(v) of TNVAT Act was amended. It is equally true that the validity of un-amended provision was upheld by the Hon'ble Supreme Court. Before amendment, the provision reads as follows:-

19.2(v) sale in the course of inter-state trade or commerce falling under sub sections(1) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956)

After amendment, the provision reads as follows:-

19 2(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, 1956.

6.The question arose as to whether Section 19(2)(v) of TNVAT Act, as amended by 2015 is retrospective. After a detailed discussion of the entire statutory scheme, a learned Judge of this Court, vide order dated 30.08.2019 in W.P.(MD)No.15103 of 2017 *(Tvl.Bharath Traders Vs. The Commissioner of Commercial Taxes, Chennai and other*), held that since the substitution only seeks to set right an anomaly, it necessarily has to be effective from the date of inception of the Act itself, that is retrospectively.

7.In *TVS Motor Company Limited* case decided by the Hon'ble Supreme Court, the retrospective applicability of the amendment was not considered. I am therefore satisfied that the case on hand is squarely covered by the decision in Bharath Traders case. In this view of the matter, the orders impugned in the writ petitions are quashed. These Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The State Tax Officer,
Madurai Rural South Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai-625 020.

+2 CC to M/s.B.ROOBAN, Advocate (SR-14671 & 14672[F] dated 31/03/2021)

W.P.(MD)Nos.4692 & 4712 of 2021
and
W.M.P.(MD)Nos.3799 & 3825 of 2021
30.03.2021

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