BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :10.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.12063 of 2018
and
W.M.P.(MD)Nos.10996 and 13337 of 2018

Tvl.KM Best Medical Works Private Ltd.,
Represented by its Managing Director,
V.Mahalakshmi. ... Petitioner

Vs.

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

2.The Assistant Commissioner (ST),
Madurai Rural (South) Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai - 625 020. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarifed , to call for the records pertaining to the impugned proceedings of the 2nd respondent in TIN No.33175164957/2014-15 dated 25.04.2018 and quash the same.

For Petitioner : Mr.B.Rooban
For Mr.Raja.Karthikeyan.

For Respondents : Mr.G.Arjunan,
Government Advocate.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner is engaged in sale of medical equipments. The writ petitioner has registered himself as an assessee with the second respondent. The case on hand pertains to the assessment years 2014-15. The petitioner's assessment was finalized on deemed assessment basis under Section 22(2) of the Tamil Nade Value Added Tax Act, on 31.10.2015. The petitioner had reported Inter-State sales against Form "C" declarations to the tune of

Rs.4,20,149/-. The sales turn over was to the tune of Rs.37,15,114/- and they were without Form "C" declarations. Since the petitioner contrary to the expectations did not receive Form "C" declarations from the other State dealers for the turn over of sales against Form "C" declarations, the second respondent treated the entire turn over as sales without Form "C" declarations and passed an assessment order dated 28.02.2017 by reversing the input tax credit. In the meanwhile, during March 2018, the petitioner received Form "C" declarations for the sales reported by him under Section 8(1) of CST Act and submitted the same to the second respondent, seeking revision of the assessment. This rectification petition filed under Section 84 of the Act was considered and the impugned order dated 25.04.2018 was passed, taking note of the Form "C" declarations submitted by the petitioner and yet reversing the input tax credit to the tune of Rs.1,64,266/-. The same is under challenge in this writ petition.

3.The respondents have filed a detailed counter affidavit and the second respondent wanted this Court to sustain the order impugned in the writ petition. The learned Government Advocate submitted that the order passed by the second respondent both in the original assessment proceedings as well as rectification proceedings are very much in consonance with Section 19 of the Tamil Nadu Value Added Tax Act.

4.I carefully considered the rival contentions and went through the materials on record. As rightly pointed out by the learned counsel for the petitioner, issue on hand is squarely covered by the order dated 30.08.2019 in W.P.Nos.15130 of 2015 etc Batch (Bharath Traders vs. The Commissioner of Commercial Taxes and Another). In the said writ petition, the issue was framed in the following terms:-

> "7. *The claim of the assessee/petitioner was that with the substitution of sub clause (v) of Section 19(2), the benefit of ITC was available in respect of inter-State transactions whether covered by C-Form or not, in terms of both Section 8(1) and (2) of the CST Act. In short, the lis for consideration before me is 'whether the provisions of Section 19(2)(v) of the Tamil Nadu Value Added Tax Act, 2006 as amended by the Tamil Nadu Value Added Tax Act (Amendment Act, 2015) are retrospective and would apply to earlier periods of assessment or prospective, applying to the period commencing 01.04.2015 only'.*"

5.After a detailed discussion of the various case laws, it was held as follows:-

> "*19. Section 8(1) of the CST Act provides the benefit of concessional rate of tax, upon production of a statutory Declaration form, to an interstate transaction*

with a registered dealer, and relating to specified goods. Section 8(2) stipulates that an interstate transaction with an unregistered dealer shall be visited with the same rate of tax as applicable to a domestic transaction involving identical goods. While Section 19(2)(v) extended input tax credit in respect of the transaction under Section 8(1), the same benefit was unavailable to the identical transaction with an unregistered dealer, taxable in terms of Section 8(2) of the CST Act. Though the benefit of ITC was initially restricted as an inducement to dealers to transact with registered dealers alone, Legislature has broadened, in its wisdom, the grant of benefit of ITC to transactions with unregistered dealers as well, albeit in 2015. Having taken such a decision in principle, there is no rhyme or reason to restrict the benefit only from the date of substitution. Such restriction would discriminate against transactions under Section 8(2) for the prior period, apart from leading to a dichotomy in the manner in which transactions in terms of Section 8(2) pre and post 01.04.2015 are assessed to tax.

20. It is also not the case of the revenue that the amendment has been propelled in 2015 for a specific reason or logic and the inevitable conclusion I am led to is that legislature corrected an anamoly in 2015 by way of the amendment in question, bringing transactions under Section 8(2) also within the beneficial sweep of 19(2)(v).

21. Since the substitution in the present case only seeks to set right an anomaly it necessarily has to be effective from the date of inception of the Act itself, retrospectively.”

6.Respectfully applying the ratio laid down above, I have to hold that the respondents erred in effecting reversal of input tax credit. In this view of the matter, the order impugned in the writ petition is quashed. The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// 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:

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+1 CC to M/s.B.ROOBAN, Advocate (SR-10639[F] dated 12/03/2021)

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(2/5)

RK (27.04.2021) 4P 4C