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.14038 of 2018
and
W.M.P.(MD)No.12728 of 2018

Tvl. Bharath Traders,
Represented by its Partner,
K.N.Kandavel. ... 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 Commercial Tax Officer,
South Avani Moola Street 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 Mandamus, to call for the records pertaining to the impugned proceedings of the 2nd respondent in TIN No.33304842021/2011-12 dated 27.04.2018 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 petitioner is an assessee registered with the second respondent. The case on hand pertains to the assessment year 2011-12. The petitioner's original assessment was deemed to have been completed as on 31.10.2012 under Section 22(2) of the Tamil Nadu Value Added Tax Act. The petitioner had reported Inter-State taxable sales to the tune of Rs.58,42,886/- under Central Sales Tax Act. According to the petitioner, out of the said turn over, turn over to the tune of Rs.11,57,696/- was without "C" Form declaration while the remaining was against "C" Form declaration. The petitioner paid tax at the concessional rate under Section 8(1) of CST Act for those transactions covered by "C" Form and paid tax at original rate of tax for the turn over not covered by "C" Form in terms of Section 8(2) of CST Act. According to the petitioner, due to default on the part of the other State dealers "C" Form could not be obtained. The petitioner had also effected reversal of input tax credit. Nevertheless, the second respondent issued notice dated 30.10.2017 proposing to reverse the input tax credit in respect of the Inter-State sales not covered by "C" Form for which input tax credit had been claimed. After issuing personal hearing notice and after considering the objections of the petitioner, the impugned order came to be passed. In the impugned order both tax and penalty have been imposed on the petitioner. In the impugned order, it has been stated that Inter-State sales not covered by "C" Forms has no input tax credit and that is why reversal of input tax credit has been made.

3.The second respondent has filed a detailed counter affidavit and the second respondent had referred to the statutory provisions to sustain the impugned order.

4.I carefully considered the rival contentions. There can be no dispute that the 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:

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of
Commercial Taxes,
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+1 CC to M/s.B.ROOBAN, Advocate (SR-10642[F] dated 12/03/2021)

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(1/5)

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