IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.3834 of 2022
and W.M.P.No.3970 of 2022

Tvl. S.R. Resins and Chemicals Industries,
rep. by its Partner A. Vasuhi
No.58/105, Athipalayam Road,
Chinnavedapatti,
Coimbatore – 641 049. ...Petitioner

-Vs-

1. The State of Tamil Nadu,
rep. by the Secretary to the Government,
Commercial Taxes Department,
Fort St. George, Chennai-9.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-5.

3. The Assistant Commissioner (ST),
Annur Assessment Circle,
Coimbatore. ...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records on the file of 3rd respondent in TIN:33792200781/12-13 dated 18.11.2021 and quash the same as illegal, invalid and without jurisdiction.

For Petitioner : Mr.A.Chandrasekaran
For Respondents : Mr.Karthik Jaganath,
Government Advocate

O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the records on the file of 3rd respondent in TIN:33792200781/12-13 dated 18.11.2021 and quash the same as illegal, invalid and without jurisdiction.

2.The petitioner was finally assessed on the taxable turn over of Rs.12,14,00,902/- in the year 2012-13 under Tamil Nadu

Value Added Tax Act, 2006 (hereinafter referred to as 'TNVAT Act'). It is the allegation of the Revenue that, the petitioner made interstate sales without 'C' Form and therefore it attracts reversal of input tax credit under Section 19(2)(v) of the TNVAT Act 2006. Therefore, by reversing the input tax credit, an order has been passed on 18.11.2021. Challenging the same, the present writ petition has been filed.

3. Learned counsel for the petitioner would submit that, number of such writ petitions, where challenging this kind of reversal of input tax credit for the alleged reason that interstate sales has taken place without 'C' Form, were filed before this Court and the said batch of writ petitions in W.P.(MD) No.15103 of 2015 etc., batch in the matter of "Tvl.Bharath Traders -Vs- The Commissioner of Commercial Taxes and Others" was disposed of on 30.08.2019, where a learned Judge of this Court has passed the following order.

> "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.

22. These Writ Petitions are allowed and the issue framed for resolution is answered in favour of the petitioners. No costs. Connected Miscellaneous Petitions are closed."

4. Though as against the said order passed in the batch of writ petitions referred to above by the Writ Court, intra-court appeal has been filed, there has been no stay and it is yet to be admitted also. Hence, the learned counsel for the petitioner relies upon the said order and seeks the indulgence of this Court to extend the same benefit to this petitioner also.

5. However, Mr.Karthik Jagannath, learned Government Advocate appearing for the respondent Revenue would submit that, the petitioner should have exhausted the alternative remedy, without which he cannot straight away come before this Court. That apart, as against the order cited by the learned counsel for the petitioner, intra Court appeal has been filed and when that being so, the said order cannot be relied upon assailing the present impugned order.

6. I have considered the submissions made by the learned counsel on either side and have perused the materials placed on record.

7. Since the issue raised in this writ petition has already been considered and decided by the Writ Court by order dated 30.08.2019, even though intra court appeal had been filed, as on date there has been no stay against the impugned order. Therefore, the benefit extended to the petitioners in the said batch of writ petitions can be given to the present petitioner also. Hence, this Court is inclined to pass the following order in this writ petition.

8. That the impugned order in TIN:33792200781/12-13 dated 18.11.2021 is set aside in terms of the aforesaid order made in W.P.(MD) No.15103 of 2015 dated 30.08.2019. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

KST

To
1. The Secretary to the Government, State of Tamil Nadu, Commercial Taxes
Department, Fort St. George, Chennai-9.

2.The Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai-5.

3. The Assistant Commissioner (ST), Annur Assessment Circle, Coimbatore.

+1 CC to The Special Government Pleader (T) sr 13462
+1 CC to Mr.Chandrasekaran, Advocate sr 12662.

W.P.No. 3834 of 2022

MG(CO)
SP(18/03/2022)