IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.Nos. 24003 to 24005 of 2012 and
M.P.Nos.1, 1 and 1 of 2012

M/s.Sri Ramajayam Dhalls,
Rep. by Partner-T.Ramajayam,
No.55, Govindappa Naicken Street,
Chennai-1. ... Petitioner in all W.P.'s

-vs-

The Assistant Commissioner (CT),
Mannady West Assessment Circle,
Wavoo Complex, Chennai-1. ... Respondent in all W.P.'s

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorari to call for the records on the files of the respondent herein in TIN Nos.53971264625/07-08, 33971264625/08-09 and 33971264625/09-10 dated 21.08.2012 and quash the same as illegal, without jurisdiction and against the provisions of the Tamil Nadu Value Added Tax Act, 2006 read with Tamil Nadu Value Added Rules, 2006.

For Petitioner : Mr. P.Radhakrishnan

For Respondent : Mr.M.Venkateswaran
Special Government Pleader

COMMON ORDER

These Writ Petitions have been filed challenging the orders of the Respondent dated 21.08.2012 made in TIN Nos.53971264625/07-08, 33971264625/08-09 and 33971264625/09-10 and quash the same as illegal, without jurisdiction and against the provisions of the Tamil Nadu Value Added Tax Act, 2006 read with Tamil Nadu Value Added Rules, 2006.

2. The only question that arises for consideration in these Writ Petitions is whether it is permissible to invoke Section 19(20) of the Tamil Nadu Value Added Tax Act, 2006 prior to its insertion on 19.08.2010 vide Amendment Act 22 of 2010. These Writ Petitions are filed in respect of the Assessment Years 2007-2008, 2008-2009 and 2009-2010 i.e., prior to insertion of Section 19(20) of the Tamil Nadu Value Added Tax Act, 2006.

3. It is the case of the Assessee that the question whether amendment to Section 19 (20) of the Tamil Nadu Value Added Tax Act, 2006, can be given retrospective

effect came up before the Hon'ble Supreme Court in the case of ***Jayam and Co. vs. Assistant Commissioner and another*** reported in ***(2016) 96 VST 1 (SC)*** wherein it was held that the amendment cannot be given retrospective effect. The relevant portion of the said Judgment is extracted hereunder:

> "18......*When we keep in mind the aforesaid parameters laid down by this Court in testing validity of retrospective operation of fiscal laws, we find that the amendment in question fails to meet these tests. The High Court has primarily gone by the fact that there was no unforeseen or unforeseeable financial burden imposed for the past period. That is not correct. Moreover, as can be seen,sub -section (20) of section 19 is altogether new provision introduced for determining the input tax in specified situation, i.e., where goods are sold at a lesser price than the purchase price of goods. The manner of calculation of the ITC was entirely different before this amendment. In the example, which has been given by us in the earlier part of the judgment, "dealer" was entitled to ITC of Rs.10 on resale, which was paid by the dealer as VAT while purchasing the goods from the vendors. However, in view of section 19 (20) inserted by way of amendment, he would now be entitled to ITC of Rs.9.50. This is clearly a provision, which is made for the first time to the detriment of the dealers. Such a provision, therefore, cannot have retrospective effect, more so, when vested right had accrued in favour of these dealers in respect of purchases and sales made*

between January 1, 2007 to August 19, 2010. Thus, while upholding the vires of sub section (20) of section 19, we set aside and strike down Amendment Act 22 of 2010 whereby this amendment was given retrospective effect from January 1, 2007.”

4. In view of the judgment of the Hon'ble Supreme Court referred to supra, these Writ Petitions are allowed by setting aside the orders passed by the Respondent dated 21.08.2012 insofar as it invokes Section 19(20) of the Tamil Nadu Value Added Tax Act, 2006. No costs. Consequently, connected Miscellaneous Petitions are closed.

[S.V.N., J.] [M.S.Q., J.]
14.12.2022

Index: Yes / No
arr

To:

The Assistant Commissioner (CT),
Mannady West Assessment Circle,
Wavoo Complex, Chennai-1.

S. VAIDYANATHAN,J.
and
MOHAMMED SHAFFIQ,J.

arr

W.P.Nos.24003 to 24005 of 2012
and
M.P.Nos.1, 1 and 1 of 2012

14.12.2022