IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.03.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.7661, 7662, 7663, 7664, 7665, 7666, 7667 of 2020 and WMP.Nos.9015, 9016, 9017, 9018, 9019, 9020 & 9021 of 2020

WP.No.7661 of 2020

M/s.Kone Elevator India Private Ltd.,
Represented by Director - Corporate Affairs
and Company Secretary,
8th Floor (Forum Vijaya Mall)
Plot No.183, NSK Salai, Arcot Road
Vadapalani, Chennai-600 026. ... Petitioner

Vs

The Assistant Commissioner (ST)
Royapettah Assessment Circle
46, Greenways Road, Chennai-600 028. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent in TIN:33920781648/2007-08 and quash the order dt. 28.02.2020 passed therein in so far the issue relating to 'ineligible claim of exemption on the sale of goods to the dealers who are in SEZ unit for the own consumption of SEZ dealer' is concerned.

(In all WPs)
For Petitioner : Mr.B.Raveendran
For Respondent : Ms.Amrita Poonkodi Dinakaran
Government Advocate

COMMON ORDER

The issue that arises is as regards the reversal of Input Tax Credit (ITC) in terms of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') in respect of sales made to developers of Special Economic Zones (SEZ).

2.Ms.Amrita Poonkodi Dinakaran, learned Government Advocate circulates a copy of an order of the Division Bench of this Court in a batch of Writ Appeals in WA.Nos.703 of 2015 dated 28.02.2023, which, decides this issue in favour of the petitioner.

3.Ms.Amirtha would concur on this position. The operative portion is at paragraphs 16 to 18 which read as follows:

> *'16. To sum up:*
> *a. Section 18 of the TNVAT Act, confers two benefits viz., Zero Rate i.e., sale on which no tax is payable but on which Input Tax Credit is admissible and the second being refund in addition to the above benefit of Zero rate. The benefits are independent of each other.*
> *b. Export of goods is not a condition precedent or sine qua non to qualify as a Zero Rate sale as long as the sale falls within clause(ii) of Section 18 (1) of the TNVATAct.*
> *c. To claim refund in terms of the Section 18 (2) read with 18 (3) of the TNVAT Act, export of goods is an essential condition but not the benefit of Zero Rate.*
> *d. Zero Rate is distinct from exemption and thus the provisions of Section 19 (5) of the TNVATAct would not get attracted.*
> *e. The impugned circular is set-aside to the extent it is contrary to the law declared by this Court.*
> *f. The provisions of Section 18 the TNVAT Act cannot be controlled by a notification under Section 30 of the TNVAT Act*

inasmuch as Section 18 of the TNVAT Act confers a larger benefit. It is open to an assessee to claim a larger/ greater benefit.

g. The expression sale in Section 18 of the TNVAT Act must be understood keeping in view the definition of sale under Section 2(33) of the TNVAT Act. Thus, works contract or for that matter any of the categories of mutant sales which is deemed to be sale would fall within the meaning of the expression sale employed in Section 18 of the TNVATAct.

17. The order of the learned Single Judge is set-aside to the extent it is contrary to the views expressed above.

18. We do not intend to examine the merits and the facts of each case but remand the matter back to the Assessing Authority, who shall re-do the assessment keeping in mind the law declared with regard to the scope of Section 18 of TNVAT Act. Resultantly, in cases where the subject matter of challenge are show cause notices, it is open to the assessee/ appellant/ petitioner to submit their objections by placing reliance upon the present judgment and the assessing officer shall complete the assessment within a period of 12 weeks thereafter taking into account the law declared by this Court as to the construct of Section 18 of the TNVAT Act. In cases where the subject matter of challenge are orders of Assessments, the same are set-aside and the matters are remanded back to the Appellate Authority **(to be read as assessing authority)**. *It is open to the Revenue to re-do the assessment keeping in view the law declared by this Court as to the construct of Section 18 of the TNVAT Act. The above exercise shall be completed after granting the assessee/ appellants/ petitioners adequate opportunity of personal hearing. The order of the Tribunal in Tax Case Appeals are also remanded back to the Assessing Officer for fresh consideration to consider in terms of this judgment. The above batch of Writ Appeals, Writ Petitions and Tax Case Appeals are disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.'*

(Emphasis supplied by the Court)

4.In light of the aforesaid order, the impugned assessment orders for the periods 2007-08 and 2014-15 (Central Sales Tax, 1959) and 2007-08 to 2011-12, 2013-14 and 2014-15 (Tamil Nadu Value Added Tax Act, 2006) are set aside and remanded to the file of the assessing authority to be redone bearing in mind the conclusions of the Division Bench in the above order.

5.These writ petitions are allowed. No costs. Connected miscellaneous petitions are closed.

23.03.2023

vs
Index : Yes / No
Speaking Order
Neutral Citation : Yes

To

The Assistant Commissioner (ST)
Royapettah Assessment Circle
46, Greenways Road,
Chennai-600 028.

Dr.ANITA SUMANTH,J.

vs

W.P.Nos.7661, 7662, 7663, 7664, 7665, 7666, 7667 of 2020 and WMP.Nos.9015, 9016, 9017, 9018, 9019, 9020 & 9021 of 2020

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