BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:06.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P(MD).Nos.9226 and 9227 of 2014 and 2369 of 2015
and M.P(MD).Nos.1, 1, 2 and 2 of 2014, 1 and 2 of 2015

M/s.Maris Spinners Limited Unit II,
Rep.by its General Manager,
R.S.Ganappathi ... Petitioner in W.P(MD).Nos.9226 and 9227 of 2014

M/s.R.V. & Sons,
Rep.by its partner,
V.Ramasamy ...Petitioner in W.P(MD).No.2369 of 2015

Vs.

1.The State of Tamil Nadu,
Rep.by its Secretary to Government,
Commercial Taxes and Registration Department,
Fort St.George, Chennai. ...1st respondent in all writ petitions

2.The Assistant Commissioner (CT),
Woraiyur Assessment Circle,
Trichy. ...2nd Respondent in W.P(MD).Nos.9226 and 9227 of 2014

3.The Assistant Commissioner (CT),
Theni-I. ...2nd Respondent in W.P(MD).No.2369 of 2015

PRAYER in W.P(MD).No.9226 of 2014: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in TIN:33633441305/2013-14 and quash the order for the month of November 2013 dated 23.05.2014 passed therein and further direct the second respondent not to apply Section 2(1) of the Tamil Nadu Value Added Tax (Fifth Amendment) Act, 2013, to the petitioner herein, inasmuch as the petitioner is a manufacturer of goods in the State of Tamil Nadu.

PRAYER in W.P(MD).No.9227 of 2014: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in TIN:33633441305/2013-14 and quash the order for the month of December 2013 dated 23.05.2014 passed therein and further direct the second respondent not to apply Section 2(1) of the Tamil Nadu Value Added Tax (Fifth Amendment) Act, 2013 to the petitioner herein inasmuch as the petitioner is a manufacturer of goods in the State of Tamil Nadu.

PRAYER in W.P(MD).No.2369 of 2015: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in

TIN/33595120300/2014-15 and quash the order of reversing ITC on the interstate sales of manufactured/processed goods effected for the months of April to September 2014 passed therein on 04.02.2015 and further direct the second respondent not to apply Section 2(1) of the Tamil Nadu Value Added Tax (Fifth Amendment) Act, 2013 to the petitioner herein inasmuch as the petitioner is a manufacturer/processor of goods in the State of Tamil Nadu.

For Petitioner (In all W.Ps)	: Mr.R.D.Ganesan
For Respondents (In all W.Ps)	: Mr.G.V.Vairom Santhosh Additional Government Pleader

C O M M O N O R D E R

The petitioner in W.P(MD).Nos.9226 and 9227 of 2014 is a manufacturer of cotton yarn and has filed these Writ Petitions challenging the orders of assessment for the months of November 2013 and December 2013 passed by the Assistant Commissioner(CT), Woraiyur Assessment Circle, Trichy/second respondent, whereby, the petitioner was directed to pay the balance tax amounts of Rs.79,056/- (Rupees Seventy Nine Thousand Fifty Six only) and Rs.3,20,976/- (Rupees Three Lakhs Twenty Thousand Nine Hundred and Seventy Six only), on account of reversal of Input Tax Credit.

2. The petitioner in W.P(MD).No.2369 of 2015 is a manufacturer and processor of ginned cotton and cotton seed, has filed the said writ petition, challenging the order of the assessment passed by the Assistant Commissioner(CT), Theni, for the months of April to September 2014, in and by which, the petitioner was directed to pay the balance tax amount of Rs.1,87,961/- (Rupees One Lakh Eighty Seven Thousand Nine Hundred and Sixty One only), on account of reversal of Input Tax Credit.

3. Considering the fact that the issues involved in all these writ petitions are one and the same, all these Writ Petitions were ordered to be tagged together and listed before this Court for final disposal.

4. When these Writ Petitions are taken up for hearing, the learned counsel appearing for the petitioners submits that a similar issue has already been decided by this Court in the case of ***M/s.Everest Industries Limited, represented by its Senior Manager Finance vs. The State of Tamil Nadu, represented by its Secretary, Commercial Taxes Department, Fort St.George, Chennai and the Deputy Commissioner (CT)(FAC), Fast Track Assessment Circle-II, Coimbatore,*** decided on

06.02.2017 reported in ***2017(100) VST 158 (MDS).*** Following the same, a similar order was passed in W.P(MD).No.21179 of 2014 etc., on 16.09.2021. Even before that a similar view was taken by this Court in W.P.No.41264 of 2016 dated 08.06.2017 against which an appeal preferred by the Revenue Department in W.A.No.812 of 2019 was dismissed on 08.09.2022 and the relevant portion reads as follows:-

> "*3. Though there is a request for adjournment stating that the State is proposing to file an appeal, we are inclined to dismiss this writ appeal considering the fact that the issues are now covered against the State. However, we leave it open to the State to work out their remedy before the Hon'ble Supreme Court along with other cases where an order has been passed as referred to supra.*
>
> *4. Accordingly, the writ appeal stands dismissed with the above observation. No costs. Connected C.M.P. is closed."*

5. The learned counsel appearing for the petitioners further submits that since the issue has already been decided by the Hon'ble Division Bench of this Court, on the very same ratio, these Writ Petitions are also to be allowed.

6. The learned Additional Government Pleader appearing for the respondents submits that as against the order of this Court in W.P.No.7969 etc., batch dated 06.02.2017, the department has preferred an appeal in W.A.No.1260 of 2017 and the Hon'ble Division Bench has partly allowed the appeal. Against which, the state has preferred a Special Leave Petition before the Hon'ble Supreme Court of India in SLP(Civil) Diary No.5815 of 2023 etc., wherein, an order of interim stay was granted as against the judgment passed by this Court in W.A.Nos.1260 of 2017 etc., by its order dated 25.07.2023.

7. This Court considered the rival submissions made by both sides and perused the materials available on record.

8. By the orders impugned in these Writ Petitions, the Assistant Commissioner(CT), Woraiyur Assessment Circle, Trichy and the Assistant Commissioner (CT), Theni/second respondent herein have reversed the Input Tax Credit as per the amended proviso and directed the petitioners to pay the balance tax amounts.

9. The petitioners claim that they are manufacturers and the amendment would be applicable only to traders, but not to manufacturers. The Input Tax Credit is allowed, when the tax suffered goods are used for the purpose of resale or used as input in manufacturing or processing of goods in the State or used as containers, labels and other materials for packing of goods in the State, or used as capital goods in the manufacture of taxable goods. Such Input Tax Credit is also allowed, when the goods are for the purpose of sale under Section 8(1) of the CST Act, 1956 and for agency transactions by the Principal within the State. A manufacturer is allowed for availing Input Tax Credit, when he uses tax suffered goods either as input in manufacturing or processing of goods or uses the same as containers etc., for packing of goods or uses the same as capital goods. The first respondent herein amended the Tamil Nadu Value Added Tax Act, 2006, through the Tamil Nadu Value Added Tax (Fifth Amendment) Act, 2013. Section 2(1) of the said Amendment Act inserted proviso to Section 19(2) of the Tamil Nadu Value Added Tax Act, 2006 and after the said amendment, Section 19(2)(v) of the said Act reads as follows:

"*(v) sale in the course of inter-state trade or commerce falling under sub-section (1) of Section 8 of the Central Sales Tax Act, 1956(Central Act 74 of 1956).*

Provided that input tax credit shall be allowed in excess of three per cent of tax for the purposes specified in clause (v)."

10. As per the amendment, the Input Tax Credit shall be allowed in excess of 3% of tax for purchase of goods made within the State from a registered dealer and it is for the purpose of sale in the course of inter-state trade or commerce falling under sub-section (1) of Section 8 of the Central Sales Tax Act, 1956. Hence, as per the said amendment, when the goods are purchased locally from registered dealers within the State on payment of Tamil Nadu Value Added Tax and sold on inter-state basis supported by "C" declaration Form, the Input Tax Credit in excess of 3% shall be allowed for such dealer. The said amendment does not touch upon the right of allowance of input tax credit vested in a dealer who uses the local tax suffered goods as input in manufacturing or processing of goods in the State or as containers, etc., for packing of goods or as capital goods in the manufacture of capital goods. The

proviso inserted vide Tamil Nadu Value Added Tax (Fifth Amendment) Act, 2013, seeks to allow a restricted quantum of Input Tax Credit when the goods purchased within the State from a registered dealer are sold in the course of inter-state trade or commerce against Form "C" declaration.

11. A perusal of the impugned assessment orders reveals that the Assistant Commissioner(CT), Woraiyur Assessment Circle, Trichy and the Assistant Commissioner (CT), Theni/second respondent herein, have not taken note of the decisions rendered by this Court, while calculating the assessment. The petitioners claim that they are manufacturers and the amendment would be applicable only to traders and not to manufacturers. Therefore, the claim of the Assistant Commissioner(CT), Woraiyur Assessment Circle, Trichy and the Assistant Commissioner (CT), Theni/second respondent herein in directing the petitioners to pay the Input Tax Credit is not correct.

12. Accordingly, the impugned orders dated 23.05.2014 and 04.02.2015 respectively passed by the Assistant Commissioner(CT), Woraiyur Assessment Circle, Trichy and the Assistant Commissioner

(CT), Theni/second respondent herein, are set aside. However, since it is reported by the learned Additional Government Pleader appearing for the respondents that a similar issue is now pending for consideration before the Hon'ble Supreme Court of India in Special Leave Petition (Civil) Diary No.5815 of 2023 etc., the Assistant Commissioner(CT), Woraiyur Assessment Circle, Trichy and the Assistant Commissioner (CT), Theni/second respondent herein are at liberty to restore their claim, based on the outcome of the decision of the Hon'ble Supreme Court of India in the said Special Leave Petition.

13. Accordingly, these Writ Petitions are allowed. No costs. Connected miscellaneous petitions are closed.

06.11.2023

Index: Yes/No
Internet: Yes/No
ssb

To

1.The State of Tamil Nadu,
Rep.by its Secretary to Government,
Commercial Taxes and Registration Department,
Fort St.George, Chennai.

2.The Assistant Commissioner (CT),
Woraiyur Assessment Circle,
Trichy.

3.The Assistant Commissioner (CT),
Theni-I.

B.PUGALENDHI, J.

ssb

W.P(MD).Nos.9226 and 9227 of 2014 and 2369 of 2015

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