IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.02.2025

CORAM

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.Nos.4651, 4658, 4681, 4689, 4693 & 4696 of 2023
and W.M.P.Nos.4649, 4650,4706, 4707,4697, 4698,
4658, 4659, 4709, 4711, 4714 & 4717 of 2023

Arval India Private Limited,
Door No.1, Plot No.14,
Thiruvalluvar Street,
VGP Shanti Nagar, Narayanpuram,
Chennai 600 001, Chengalpattu District,
represented by its Senior Manager Taxation. .. Petitioner in all W.Ps

Vs.

1.State of Tamil Nadu,
Commercial Taxes and Registration Department,
Represented by Secretary to Government,
Commercial Taxes and Registration Department Secretariat,
Chennai – 600 009, PBX No.044-25665566.

2.Deputy Commissioner (CT) (Appeal),
Chennai-II (FAC), Chennai -6,
3rd Floor, C.T.Building Annexe,
No.1, Greams Road,
Chennai – 600 006.

3.The Assistant Commissioner (ST) (FAC),
Medavakkam Assessment Circle,
Room No.232. II Floor, Integrated Building,
Nandanam, Chennai – 600 035. .. Respondents
in all W.Ps

Prayer in W.P.No.4651 of 2023: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue Writ of Certiorari, to call for the records of the impugned order bearing No.AP/08/2022 (VAT/2011-12) dated 15.12.2022 on the file of respondent No.2 and to quash the same to the extent the impugned order renders conclusive findings on the petitioners eligibility to Input Tax Credit and the petitioner's claim of zero rated sales and sales returns under the Tamil Nadu Value Added Tax Act, 2006 with consequential directions.

Prayer in W.P.No.4658 of 2023: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue Writ of Certiorari, to call for the records of the impugned order bearing No.AP/09/2022 (VAT/2012-13) dated 15.12.2022 on the file of respondent No.2 and to quash the same to the extent the impugned order renders conclusive findings on the petitioners eligibility to Input Tax Credit and the petitioner's claim of zero rated sales and sales returns under the Tamil Nadu Value Added Tax Act, 2006 with consequential directions.

Prayer in W.P.No.4681 of 2023: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue Writ of Certiorari, to call for the records of the impugned order bearing No.AP/10/2022 (VAT/2013-14) dated 15.12.2022 on the file of respondent No.2 and to quash the same to the extent the impugned order renders conclusive findings on the petitioners eligibility to Input Tax Credit and the petitioner's claim of zero rated sales and sales returns under the Tamil Nadu Value Added Tax Act, 2006 with consequential directions.

Prayer in W.P.No.4689 of 2023: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue Writ of Certiorari, to call for the records of the impugned order bearing No.AP/05/2022 (VAT/2008-09) dated 15.12.2022 on the file of respondent No.2 and to quash the same to the extent the impugned order renders conclusive findings on the petitioners eligibility to Input Tax Credit and the petitioner's claim of zero rated sales and sales returns under the Tamil Nadu Value Added Tax Act, 2006 with consequential directions.

Prayer in W.P.No.4693 of 2023: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue Writ of Certiorari, to call for the records of the impugned order bearing No.AP/07/2022 (VAT/2010-11) dated 15.12.2022 on the file of respondent No.2 and to quash the same to the extent the impugned order renders conclusive findings on the petitioners eligibility to Input Tax Credit and the petitioner's claim of zero rated sales and sales returns under the Tamil Nadu Value Added Tax Act, 2006 with consequential directions.

Prayer in W.P.No.4696 of 2023: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue Writ of Certiorari, to call for the records of the impugned order bearing No.AP/06/2022 (VAT/2009-10) dated 15.12.2022 on the file of respondent No.2 and to quash the same to the extent the impugned order renders conclusive findings on the petitioners eligibility to Input Tax Credit and the petitioner's claim of zero rated sales and sales returns under the Tamil Nadu Value Added Tax Act, 2006 with consequential directions.

In all W.Ps

For Petitioner : Mr.Karthik Sundaram

For Respondents : Mr.Haja Nazirudeen
Additional Advocate General-I
for Mr.V.Prashanth Kiran
Government Advocate
Assisted by Mr.R.Haribabu
Government Advocate

COMMON ORDER

These writ petitions have been filed challenging the impugned assessment order bearing Nos.AP/05/2022 (VAT/2008-2009), No.AP/06/2022 (VAT/2009-10), No.AP/07/2022 (VAT/2010-11), No.AP/08/2022 (VAT/2011-12), No.AP/09/2022 (VAT/2012-13) and No.AP/10/2022 (VAT/2013-14) dated 15.12.2022.

2.Learned counsel for the petitioner would submit that challenging the impugned orders, the petitioner preferred an appeal before the 2nd respondent. The 2nd respondent after hearing the petitioner's arguments, set aside the impugned orders in entirety and remanded the matter back to the the 3rd respondent for re-consideration and to pass fresh orders after taking note of the averments and documents filed in support of their submission. However, while passing such order, the 2nd respondent made some observations which will directly influence the decision which has to be taken by the 3rd respondent. Hence, these writ petitions have been filed.

3.Mr.Haja Nazirudeen, learned Additional Advocate General-I appearing for the respondents would fairly submit that the matter was remanded to the 3rd respondent after setting aside the original assessing order. Now, the petitioner is only aggrieved by some of the observations made by the 2nd respondent in the appeal. Therefore, this Court may pass orders directing the 3rd respondent to pass appropriate orders without taking into consideration the observations of the 2nd respondent in its order and to considered the matter afresh and pass final assessment orders.

4.Heard the learned counsel for the petitioner as well as Mr.Haja Nazirudeen, learned Additional Advocate General-I appearing for the respondents and perused the materials available on record.

5.Considering the above submissions it is seen that the 2nd respondent after hearing the petitioner's submission remanded the matter back to the Assessing Officer by setting aside the original assessment orders dated

15.12.2022 with a direction to the 3rd respondent to consider all the documents and the reply filed by the petitioner and pass orders afresh. Further, the 2nd respondent has made the following observations:-

"**REVERSAL OF ITC ORDERED FOR RS. 1,31,42,026/-**

As already stated the appellants are providing leasing services of vehicles The appellants purchase motor vehicles as per choice of the customers and payments for the motor cars will be made or settled by the appellants on behalf of the customers As per the agreement already entered the appellants will act as Lessor and the customer will act as lessee But the Tax Invoice for the sale of cars by the Car Company will be issued in the name of the lessee and the appellants name will manifested as lessor or financier. As per the agreement already entered the right to use of the car is bestowed on the lessee. The lessee will become owner of the car till the agreement period is over. In as much as the Tax Invoice is being issued in the name of lessee, the Motor Vehicle Company will reflect the names of the lessees and not the names of the appellants in their Annexure II monthly returns. As their Company's name does not find place in the Annexure II of the monthly returns of respective Motor Vehicle Company the appellants cannot claim ITC even though they are happened to be real owners of the motor vehicles. The contention of the appellants is that as they settled the full payment of the motor vehicle as they are real owners of the vehicles they are entitled for ITC. It is not sustainable by law as the Tax Invoices were not issued in their names. Even their TINs were not mentioned. In as much their name did not find place in Annexure II of the monthly returns of the other end dealers the appellants cannot claim ITC. As per sec. 19(1) of the TNVAT ACT 2006 read with sec. 19(10) of the TNVAT ACT 2006 as the appellants did not possess documentary evidences as prescribed in those sections the denial of claim by the assessing officer is therefore quiet in order.

However in order to do justice in the matter and as the assessment is pertaining to the year 2011-12, this portion of the impugned assessment order is ordered to be set aside and remanded to the assessing officer with a direction to redo the assessment after taking into consideration of the various contentions of the appellants and other connected records and agreements entered with the lessees and monthly returns of other end dealers of the Car Sellers in depth as prescribed under sec. 19 of the Act to ascertain whether the claim of the appellants is bonafide one or not? The appellants may be asked to produce Tax Invoices as prescribed under sec 19 (1) of the Act and other vital documents as per rule 10(2) of the TNVAT Rules 2007. After verification of these records the assessing officer after duly observing principles of natural justice pass appropriate order in the matter. With these observations this portion of the assessment is ordered to be remanded.

DISALLOWANCE OF ZERO RATED SALES AND SALES RETURN

As seen from the impugned order the appelants have not submitted so for the televant records or documents as desired by the Assessing Officer in order to claim emption from tax for the sale effected to SEZ Units the appellants have to file declation certificates as prescribed in Notification No II (2)/CTR/ (d-4-2016- G.O. No.15 (IV) dated 29th January 2016 in the absence of these declaration certificates declaring that they are authorised SEZ units by the authority specified by the Government of India and also furnishing details of purchases made from the appellants, exemption cannot be given for the sales made to them. At the time of hearing of appeal they have also filed a batch of documents including specimen copies of the Tax Invoices and other connected documents

Similarly for the disallowance of exemption for sales return the appellants have not filed any documentary evidences such as sales invoices, copies of the credit notes, certificate to the effect that sales return claim is made within six months and the sale is included in the monthly return and tax had been paid as prescribed under rule 10(6) (b) of the TNVAT Rules 2007. In the absence of these documents the disallowance of exemption appears to be quiet in order At the time of hearing of appeal they have also filed a batch of documents including specimen copies and other connected documents in this regard.

However in the interest of justice and in order to make speaking order it is decided to give one more opportunity to the appellants and so entire assessment is ordered to be set aside and remanded to the assessing officer and the appellants are directed to file all the documents as desired by the assessing officer to make justifiable and speaking order in accordance with law. The assessing officer is directed to call for the records once again and verify them and make speaking order in the matter after observing principles of justice and after taking into consideration of the observations made at supra. The appellants are requested to co-operate with the assessing officer and produce all the documents wholly as desired by the assessing officer and to prove their stand. In the result this portion of the assessment also stands remanded

As regards period of limitation the contentions of the appellants are untenable. The period of limitation expires only on 31.10.2021. But the impugned order was made on 14.08.2021 only. Hence this order was not made after expiry of period of limitation. All disputes raised in this appeal were answered in the foregoing paragraphs

As regards penalty levied under sec.27(4) of the Act it is also ordered to set aside and remanded to the assessing officer for reconsideration after knowing the aftermath of revision of assessment. In the result this portion of the order stands remanded."

No doubt, the above observations made by the 2nd respondent would directly influence the Assessing Officer while passing the assessment order. Therefore, this Court is of the view that when the original order was set aside, the Assessing Officer is supposed to apply its mind and pass orders, without influencing any of the observations made by the Appellate Authority. Accordingly, this Court passes the following orders:-

(i)The Assessing Officer is directed to pass the Assessment order afresh after considering the submission, reply and documents filed by the petitioner without influencing the observations made by the Appellate Authority.

(ii)If the petitioner is intended to submit any additional reply/objection, the same shall be filed within a period of two weeks from the date of receipt of a copy of this order. Thereafter, within a period of six weeks, the Assessing Officer shall pass the assessment order.

(iii)It is made clear that apart from the observation made by the Appellate Authority, the Assessing Officer shall make any of the observation in the impugned assessment order.

6.With the above directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

14.02.2025

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Index : Yes/No
Neutral Citation: Yes/No

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KRISHNAN RAMASAMY, J.

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