IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Reserved on | 01.08.2025 |
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| Pronounced on | 10.10.2025 |

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

**S.A.No.1035 of 2019**

M/s. Rishabh Enterprises,
rep. by its Partner Mr.Rakesh Daga,
No.66/39, Tirumalai Pillai Road,
T. Nagar, Chennai 600 017. ...Appellant

Vs.

M/s. Bharat Heavy Electricals Limited
Rep. by its Managing Director
High Pressure Boiler Plant
Tiruchirapallai 620 014. ...Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the aggrieved portion of judgment and decree dated 26.02.2019 passed in A.S. No.426 of 2018, on the file of the XVII Additional City Civil Court, Chennai, confirming the aggrieved portion of Judgment and decree dated 08.12.2016 passed in O.S.No.3094 of 2015, on the file of the V

Assistant City Civil Court, Chennai.

For Appellant : Mr. K.S. Ganesh Babu
For Respondent : Mr.S.Shyam Kumar

**JUDGMENT**

In this Second Appeal, challenge is made to the aggrieved portion of judgment and decree dated 26.02.2019 passed in A.S. No.426 of 2018, on the file of the XVII Additional City Civil Court, Chennai, confirming the aggrieved portion of Judgment and decree dated 08.12.2016 passed in O.S.No.3094 of 2015, on the file of the V Assistant City Civil Court, Chennai.

2. The unsuccessful plaintiff before both the courts below has filed the present second appeal.

3. For the sake of convenience the parties are referred to as per their ranking in the trial court.

4. The case of the plaintiff is that he has supplied refrigeration items to the defendant on credit basis on various purchase orders and raised invoices for payment there to. The defendant has made part payments of a sum of Rs.2,25,414/-on 9.6.2014 and a sum of Rs.18,58,103/- on 8.7.2014 totalling an amount of Rs.20,83,517/- through ICICI RTGS payment towards the abovesaid purchase. After giving credit to the said part payments made by the defendant, still there is a sum of Rs.3,21,650/- due and payable by the defendant to the plaintiff. In spite of the plaintiff's request and demand made vide its letters dated 9.9.2014 and 29.1.2015, the defendant failed and neglected to pay the said outstanding amounts to the plaintiff. The plaintiff has sent a legal notice on 4.4.2015 through his counsel to the defendant by way of a registered post with acknowledgment due and the said notice was received by the defendant on 8.4.2015. The defendant neither made payment nor replied to the said legal notice. The defendant is liable to pay interest at 24% per annum on the balance outstanding invoice amount as the transaction is commercial in nature. As on date, a sum of

Rs.3,21,650/- is outstanding in respect of the abovesaid purchase and the same has to be paid along with 24% interest per annum. Hence, the total outstanding amount payable by the defendant is Rs.3,89,320/-. Hence the suit.

5. In the written statement filed by the defendant it is stated that the defendant is a public limited company, registered under the companies Act, having one of its units at Tiruchirappalli. The defendant is a manufacturer of power boilers and its components. In the usual course of its business, the defendant procures various goods and services though public tendering. The plaintiff filed this suit alleging short payment of Rs.3,21,650/- against 10 invoices in relation to supply of items under the two purchase orders. The payment as per the agreed terms of the contract, subject to statutory dues, have been paid and there is no short payment as alleged. The defendants denied the liability as alleged in the plaint. The invoices are as per the terms of the agreement only on the dates mentioned against each invoice. The covering letters of the invoices of the plaintiff dated 3.4.2014 and 1.7.2014 show the date on

which the said invoices were sent by plaintiff and the date seal of defendant company on the said covering letters show that the said invoices reached the defendant company only on 7.4.2014 and 3.7.2014 respectively. Copy of the invoices along with the covering letters are filed along with the written statement. Further the date of invoice No.2783 is 15.7.2014 and the date of receipt of the same by defendant is 2.3.2015 and the copy of the invoice showing its date and also date seal showing the date on which they are received by the defendant company is filed along with the written statement. On receipt of the said invoices, the defendant has processed the bills and payment to the tune of Rs.21,32,633.00 was made to the plaintiff. The amounts of Rs.2,72,534.00 was deducted from the bill amounts as detailed above under section 19(11) of Tamil Nadu Value Added Tax Act, 2006 (for short "TN VAT Act"), input tax credit needs to be taken within the same month of transaction of taxable purchase. If this cannot be done, credit shall be claimed before the end of the financial year or before ninety days from the date of purchase, whichever is later. The invoices at SL. 1 to 5 of the table are submitted by the plaintiff after the lapse of more than 4 months from the date of invoice. It is seen that the Value Added Tax (VAT) credit dis-allowance is done only in the case of 7 invoices. No deductions on account of VAT dis-allowance are done in case of invoices mentioned at Sl.Nos.6, 7 and 10 as the said invoices were within 90 days of the date of invoice and hence defendant could avail VAT credit and the same was paid to the plaintiff. It is also submitted that the invoices against which VAT amounts are disallowed are of the month February and March and as per the provisions of TN VAT Act, the purchaser has to take credit "before the end of the financial year or before ninety days from the date of purchase, whichever is later" and in these cases the defendant has applied the period of "90 days" from the date of invoice as the cut of date for availing VAT credit. In the case of invoice at Sl.No.10 the defendant has applied the period as "the end of financial year" as the cut of date for availing VAT credit and though the invoice at Sl.No.10 was also after the lapse of 7 months of the date of invoice, the defendant has paid the VAT portion also to the plaintiff as the defendant could take VAT credit till the end of financial year. The defendant also made certain deductions against invoice nos. at S1.No.6 to 10 in the table being liquidated damages as per the terms of the contract between plaintiff and defendant due to delayed supply of certain items.

5.1. As per the respective purchase order, the delivery date for SL.No.6 to 9 was 4.2.2014 and it can be seen in page No.3 – 5 of the purchase order vide No.7100111611 dated 1.1.2014 filed by the plaintiff along with the plaint. Regarding the invoice at Sl.No.10 of the above table the delivery date was 15.4.2014 and the same can be seen in page No.3 of the respective purchase order vide No.7000015942 dated 8.3.2014, a copy of the same is filed along with the written statement. Whereas it can be seen from the table in the written statement that the plaintiff has supplied the items against the invoices at Sl.No. 6 to 10 after the delivery schedule stipulated in the said purchaser orders. As per the terms of the purchase orders "if the supplier fails to deliver the raw materials/components/equipments within the period specified in the contract, the purchaser shall deduct liquidated damages, a sum equivalent to 0.5% of the price for each week of delay or part purchase order value/undelivered portion to be reckoned from the contract delivery date to cargo readiness date (final inspection agency's signed date in the test certificate.)" The plaintiff issued the legal notice on 4.4.2015 and the same was received by the defendant on 8.4.2015. The legal notice was forwarded to the respective department for verification of facts. In the meantime the plaintiff filed the suit in the month of June 2015. The period of notice was too short and before the defendant could file a reply, the plaintiff filed the present suit.

6. The trial court on the basis of pleadings, evidence and submissions made by the respective counsel for the parties, partly decreed the suit vide its judgment and decree dated 08.12.2016. Aggrieved by the said judgment and decree, the plaintiff has preferred an appeal in A.S. No.426/2018 before the XVII Additional City Civil Court, Chennai. The first appellate court, by its judgment and decree dated 26.02.2019, dismissed the said appeal by confirming the judgment and decree of the trial court. Assailing the same, the present second appeal has been preferred by the plaintiff.

7. The second appeal has been admitted on the following substantial question of law:

*"i) Whether the respondent having failed to claim input credit based on the original invoices, blame the plaintiff for the delay in seeking copies of invoices?"*

8. The learned counsel for the appellant/plaintiff submits that the suit claim is based on undisputed and valid invoices marked as Ex.A3, Ex.A6 and Exs.A8 to A12 for supplying the goods as per the purchase order of the defendant marked as Ex.A2 and Ex.A7 respectively. As per the terms of the purchase order, the defendant has to pay the invoice amount to the plaintiff. The defendant failed to plead and pay the court fee for any counter claims or set off for their alleged liquidated damages and dis-allowance of VAT credit portion. He would submit that it is an admitted fact that as per the purchase order, the invoices were raised to consignee address and the goods received by them with original tax invoices. Therefore, if they were entitled to claim input tax credit, they have to claim the same within 90 days from the date of original invoice

as per the provisions of the TN VAT Act. His further submission is that as per the provisions of Section 19 (10)(b) of the TN VAT Act, if the original tax invoice is lost, input tax credit shall be allowed only on the basis of duplicate or carbon copy of such tax invoice obtained from the selling dealer and therefore, the plea of the defendant that they could not claim input tax credit within 90 days from the date of original invoice for the goods supplied to them due to the alleged belated submission of three copies of invoice with original signature by the plaintiff is against the provisions of the TN VAT Act and Rules. He would further submit that as per the provisions of Rule (6) of the TN VAT Act Rules, that every registered dealer shall issue bill or invoice for each sale in triplicate showing the particulars of goods and quantity sold with its value, one copy of which must be retained for check by the official of the Commercial Taxes Department and accordingly the plaintiff had preferred the invoices in triplicate and the original was given to the defendant's consignee address marked as Ex.A3 to Ex.A7 and Ex.A9 to Ex.A13 and the triplicate was retained for check by officials of the Commercial Tax Department. He would further submit that in the purchased orders of the defendant marked as Ex.A2 and Ex.A7, it was only asked for three copies of invoices with original signature to be submitted. Where as, the input tax credit would be claimed only based on the original tax invoice. Therefore, the three copies of invoice with original signature asked by the defendant in the purchase orders is not for the purpose of claiming the input tax credit, but, the same were asked to give only to make payment to the plaintiff and it at all the said three copies of invoice with original signature were submitted belatedly, they could not held liable for the belated payment and they may not be held liable to pay interest for the said belated period not otherwise. It is also submitted that the defendant had not pleaded that they met with liquidate damages due to belated supply of goods by the plaintiff and that in the invoices produced before the court, it has been mentioned in the terms and conditions that interest at the rate of 24% per annum would be charged on all the bills if not paid by the due dates, since it is admittedly a commercial transaction between the parties. While so, the courts below failed to appreciate the above facts in a proper perspective.

9. The learned counsel for appellant further submits that in the absence of claiming alleged credit input tax based on the original invoice sent to the consignee address, there is no breach of contract on the part of the plaintiff. In support of his contentions, he relied on the decision of the Hon'ble Supreme Court in the case of ***M/s. Kailash Nath Associates vs. Delhi Development Authority & another*** reported in ***2015(4) SCC 136.*** Hence, he prayed for setting aside the dis-allowed portion of the judgment and decree passed by the courts below.

10. On the other hand, the learned counsel appearing for the respondent/defendant submits that the plaintiff has violated conditions of the purchase orders and submitted the invoices belatedly. As per TN VAT Act, the purchaser had to take value added tax credit before the end of the financial year or before 90 days from the date of purchase whichever is later. It is further contended that only three invoices were submitted enabling the defendant to claim VAT credit, but, seven invoices were furnished after lapse of several months. Hence, the defendant could not claim VAT credit, Hence, the plaintiff is not entitled for the amount

claimed for in the said seven invoices. He would further submit that as per Section 19(11) of the TN VAT Act, input tax credit needs to be taken within the same month of the transaction of taxable purchase and if this cannot be done, credit shall be claimed before the end of the financial year or before 90 days from the date of purchase whichever is later. He would further submit that Section 19 of the TN VAT Act was challenged as unconstitutional before the Hon'ble Supreme Court and the same was held constitutionally valid in the the judgment rendered in the case of ***ALD Automative Pvt. Ltd vs. The Commercial Tax Officer & others*** reported in ***(2019) 13 SCC 225***. Hence the defendant is entitled to deduct liquidated damages at the rate of 5% to the maximum of 15% for the delayed and undelivered portion of the articles. He would further submit that P.W.1 has admitted in his evidence that the invoices were submitted belatedly. He would further submit that the legislature has intentionally prescribed a time frame for the availment of input tax credit that accrues before the end of the financial year or within 90 days from the date of purchase, whichever is later. Section 19 of the relevant stature serves as a pre-condition for the availment of Input Tax Credit. Section

19(11) of the TN VAT Act cannot be invalidated on the grounds of being unreasonable or discriminatory. He would further contend that Input Tax Credit is a form of concession which is provided by the Act. It cannot be claimed as a matter of right, but only in terms of the provisions of the statute. Therefore, the conditions mentioned in Section 19(5)(c) of TN VAT Act, had to be fulfilled by the dealer and sub-section (2) of the Section 19 was constitutionally valid. The provision was aimed at achieving a specific and justified purpose and could not be treated as discriminatory. He would further submit that the courts have held that Section 19(11) as a valid piece of legislation and cannot be struck down as being either unreasonable or discriminatory and in violation of Articles 265 and 360(A) of the Constitution of India. In support of his contentions he has relied upon the following judgments.

i. ***Order of this Court dated 01.03.2018 in W.P. No.2972 of 2009 (Sri Laxmi Narasimma vs. The assistant Commissioner) and W.P. No.10062 of 2009 (Bhavani vs. The Commercial Tax).***

ii. ***Usa Agencies Vs. Commercial Tax officer reported in 2013 SCC Online MAD 2062.***

***iii. M/s. TVS Motor Company Limited vs. The State of Tamil Nadu and others reported in (2018) 13 SCR 96.***

Hence, he prayed for dismissal of the present appeal.

11.Heard on both sides and records perused.

12. On a perusal of the impugned judgment it is seen that the courts below have arrived to a conclusion that in view of the belated supply of invoice, VAT credit could not be claimed by the defendant and hence the plaintiff is not entitled for claiming VAT amount from the defendant. It is not in dispute that the goods were supplied to the defendant on credit basis based on various purchase orders and the plaintiff raised invoices for payment thereto. According to the plaintiff, after giving credit to the part payments made by the defendant a sum of Rs.3,21,650/- is due and payable to the defendant to the plaintiff. In spite of several requests and letters communicated to the defendant, the defendant failed to pay the outstanding amounts to the plaintiff. Hence, a legal notice (Ex.A15) was sent on 04.04.2015, which was received by the

defendant on 08.04.2015. The defendant neither made payment nor replied for the said legal notice. Hence, the plaintiff filed the above suit for recovery of money. The claim of the plaintiff was resisted by the defendant stating that as per Section 19(11) of TN VAT Act, input tax credit needs to be taken within the same month of transaction of taxable purchase, if the same is not possible, credit shall be claimed before the end of the financial year or before 90 days from the date of purchase whichever is later. While so, the invoice in Serial No. 1 to 5 were sent by the plaintiff after a lapse of four months from the date of invoice. VAT credit dis-allowance is done only in the case of seven invoices. No deductions on account of VAT dis-allowance are done in case of invoices mentioned in Serial Numbers 6, 7 and 10 as the said invoices were within 90 days of the date of invoice and hence the defendant could avail VAT credit and the same was paid to the plaintiff. It is further stated that the invoices against which VAT amounts are disallowed are of the month February and March and as per the provisions of TN VAT Act, 2006, purchaser has to take credit "before the end of the financial year or before ninety day from the date of purchase whichever is later" and in these cases the Defendant has applied the period '90 days' from the date of invoice as the cut of date for availing VAT credit. In the case of invoice at serial number 10, the defendant has applied the period as "the end of financial year" as the cut of date for availing VAT credit and though the invoice at Serial number 10 was also after the lapse of seven months of the date of invoice, the defendant has paid the VAT portion also to the plaintiff as the defendant could take VAT credit till the end of financial year. The defendant also made certain deductions against the invoice numbers at Serial Number 6 to 10 being liquidated damages as per the terms of the contract between the plaintiff and the defendant due to delayed supply of certain items. As per the purchase order, the delivery date of Serial Number 6 to 9 was on 04.02.2014 and it could be seen in purchase order dated 01.01.2014 filed by the plaintiff. With regard to Sl. No.10, the delivery date was 15.04.2014 and the same is mentioned in the Purchase order dated 08.03.2014 which is filed on the side of the defendant. From the above, it is made clear that the plaintiff has supplied the items against the invoices at serial numbers 6 to 10, after the stipulated delivery schedule in the purchase orders. The terms of the purchase orders were that "if the supplier fails to deliver the goods within the period specified in the contract, the purchaser shall deduct liquidated damages, a sum equivalent to 0.5% of the price mentioned for each week of delay or part purchase order value/undelivered portion to be reckoned from the contract delivery date to cargo readiness date final inspection agency's signed date in the test certificate".

13. It cannot be disputed that the plaintiff and the defendant are governed by the TN VAT Act. It is also not disputed that the invoices were VATable under Section 19(3) of the TN VAT Act and that input tax credit needs to be taken within the same month of transaction on taxable purchases. According to the defendant, disallowed VAT is Rs.2,50,572/- and the liquidated damages is Rs.15,057/- and the same has been claimed by the plaintiff and that the defendant is liable to deduct the same as per the terms of the contract. The defendant has relied upon the order of this Court in W.P. No.14807 and W.P. No.14808 of 2013 in which it has been held that "There is a statutory obligation for every registered dealer having turnover of sales above the amounts specified to issue a tax

invoice serially numbered containing the prescribed particulars and failure to comply with the mandatory requirements attracts penalty." In the present case, the plaintiff has admitted the delay in submitting the invoice and delay in supply of certain items attracting liquidated damages in view of the contract entered into between the plaintiff and the defendant. According to the defendant, the defendant has only disallowed VAT credit portion due to late submission of invoice and had made certain demands against the delayed supply as liquidated damages and apart from this there is no shortage of payment as alleged by the plaintiff. Where as, the plaintiff claims that there is shortage of payment against invoice, but, failed to establish the same. It has to be seen due to belated submission of invoice by the plaintiff, the defendant was not able to obtain VAT credit within the stipulated period. Section 19(11) of TN VAT Act provides that "if any registered dealer fails to claim input tax credit in respect of transaction of taxable purchase in any month, he shall make claim before the end of the financial year or before 90 days whichever is later". This Court in a bunch of writ petitions challenging the assessment order/show cause notices denying the credit taken in the revised returns involving Section 19(11) of TN VAT Act, held that Section 19(11) actually relaxes the rigor of Rule 7 under which the registered dealer is required to furnish correct and complete details of Input Tax Credit on or before 20th of succeeding month. In addition to filing of revised return under Rule 7(9), Section 19(11) enables the dealer to make the Input Tax Credit before the end of the financial year or before ninety days whichever is later. Section 19(11) not only effectuates the provision of the Act, but is also more in the nature of the beneficial to registered dealer. Therefore, the benefit of credit under the Act is in the nature of a concession given which could be availed only in the manner and in the circumstances mentioned in Section 19. Therefore, the Legislature has given one more benefit which also is in the nature of a concession in respect of registered dealer who failed to claim tax credit in any month and they have been given time to make the claim till the end of the financial year or before 90 days from the date of purchase, whichever is later. Therefore, the word "shall" used in Section 19(11) of the VAT Act is held to be mandatory and not directory. Therefore, from the above observations, it is made clear that the word "shall" in Section

19(11) of TN VAT Act is held to be mandatory and not directory. In the bunch of writ petitions filed before this Court in the case of ***Usa Agencies vs. Commercial Tax Officer reported in 2013 MLJ 6 142,*** it is held that the word "shall" used in Section 19(11) of the TN VAT Act, is held to be mandatory and not directory. The relevant portions are extracted hereunder.

> 53. Section 19(11) of TN VAT Act provides that if any registered dealer fails to claim Input Tax Credit in respect of any transaction of taxable purchase in any month, he shall make the claim before the end of the financial year or before ninety days whichever is later. In our considered view, Section 19(11) actually relaxes the rigour of Rule 7 under which the registered dealer is required to furnish correct and complete details of Input Tax Credit on or before 20th of succeeding month. In addition to filing of revised return under Rule 7(9), Section 19(11) enables the dealer to make the Input Tax Credit before the end of the financial year or before ninety days whichever is later. Section 19(11) not only effectuates the provision of the Act, but is also more in the nature of the beneficial to registered dealer.

54. We have held that the benefit of credit under the Act is in the nature of a concession given which could be availed only in the manner and in the circumstances mentioned in Section 19. Therefore, the Legislature has given one more benefit which also is in the nature of a concession in respect of registered dealer who failed to claim tax credit in any month and they have been given time to make the claim till the end of the financial year or before 90 days from the date of purchase, whichever is later. Therefore, the word shall used in Section 19(11) of the VAT Act is held to be mandatory and not directory.

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63. Legislative entries in the Seventh Schedule to the Constitution have to be read in a broad and comprehensive sense to include all subsidiary and ancillary matters. An entry, which authorises the imposition of a tax, such as Entry 54 of List II, also authorises an enactment, which prevents the tax evasion or taking excess credit. Regulating the claim of Input Tax Credit is within the powers of legislative competence. The Legislature consciously enacted Section 19(11) of TN VAT Act with avowed object of incorporating the time-frame for availing the Input Tax credit. Prescribing

such time frame for availing input tax credit is well within the legislative competence of the State.

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84. The other bunch of writ petitions challenging the assessment order/show cause notices denying the credit taken in the revised returns involving Section 19(11) of TN VAT Act are not maintainable. The writ petitions challenging the constitutionality of Section 19(11) having failed the writ petitions challenging assessment orders/show cause notices have no legs to stand and therefore, they should necessarily fail.

13.1. Again in W.P. No.2972/2009 (Sri Laxmi Narasimma vs. The Assistant Commissioner) and in W.P. No.10062/2009 (Bhavani vs. The Commercial Tax), this Court has held that Section 19(11) of TN VAT Act cannot be struck down as being either unreasonable or discriminatory.

13.2. In the judgment relied on the side of the respondent in the case of ***M/s.TVS Motor Company Limited vs. The State of Tamil Nadu and others*** it is held that Section 19(5)(c) is constitutionally valid; that this provision was aimed at achieving a specific and justified purpose to protect the revenue against clandestine transaction resulting in invasion of tax and could not be treated as discriminatory; that sale by a dealer who is registered in the State of Tamil Nadu which is effected outside the state of Tamil Nadu will qualify for ITC only when the said sale is made to a registered dealer; that insofar sales to unregistered dealers, that too, situated outside the state of Tamil Nadu, the State would not have any mechanism to find out the genuineness of the sales; that in essence, the State is put in the condition that ITC would admissible when form 'C' is given, which can be given only in those cases where sale is to a registered dealer and that prescribing such a condition in order to ensure that there is no evasion, has a rationale purpose and objective (Tamil Nadu Value Added Tax Rules, 2007 - Rule 19(9) (a)).

13.3. Therefore, the belated supply of invoice resulted in the defendant ineligible from claiming VAT credit as per Section 19(11) of TN VAT Act. Hence the Courts below were right in decreeing the suit in part, which warrants any interference by this Court. Therefore, I do not see any question of law much less a substantial question of law in order to enable me to entertain this appeal.

14. In the result,

i. The Second Appeal is dismissed. No costs.

ii. The judgment and decree dated 26.02.2019 passed in A.S. No.426 of 2018, on the file of the XVII Additional City Civil Court, Chennai, confirming the Judgment and decree dated 08.12.2016 passed in O.S.No.3094 of 2015, on the file of the V Assistant City Civil Court, Chennai, is upheld.

10.10.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The XVII Additional Judge, City Civil Court, Chennai.
2. The V Assistant Judge, City Civil Court, Chennai.
3. The Section Officer, VR Section, High Court, Madras.

**K.GOVINDARAJAN THILAKAVADI,J**
bga

**Pre delivery Judgment in**
**S.A.No.1035 of 2019**

**10.10.2025**