

W.P. (MD) No.12333 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 05.01.2024

PRONOUNCED ON : 24.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD).No.12333 of 2009
and MP(MD).No.1 of 2009

M/s.Thillai Agencies
Represented by its partner Mr.S.Rajkumar
2, A.A.Road, Virudhunagar

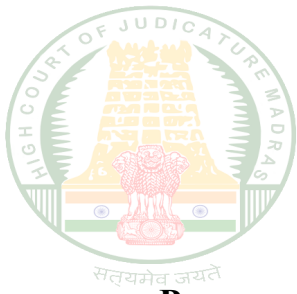
...Petitioner

Vs

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

2.The Principal Secretary/Commissioner of
Commercial Taxes
Elilagam, Chepauk
Chennai

3.The Assistant Commissioner
Virudhunagar-II Assessment Circle
Commercial Taxes Building
Madurai Road, Virudhunagar



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Prayer : Writ Petition has been filed under Article 226 of Constitution of India to issue a writ of Declaration, declaring that Section 19(15) of Tamil Nadu Value Added Tax Act 2006 as unconstitutional and enforceable.

For Petitioner : Mr.J.Pooventhera Rajan

For Respondents : Mr.N.Satheeshkumar
Additional Government Pleader

ORDER

(Made by **R.VIJAYAKUMAR,J.**)

The present writ petition has been filed by a registered dealer under Tamil Nadu Value Added Tax 2006 challenging Section 19(15) of Tamil Nadu Value Added Tax 2006 as unconstitutional and unenforceable.

2.The facts leading to the filing of the writ petition are as follows:

(i)The petitioner is a registered dealer in mobile phones and he effected purchase of Nokia Mobile Phones from an authorised whole sale dealer namely M/s.Smart Trading Company, Madurai in September 2008. The petitioner had filed monthly returns in Form-I in the month of September for the assessment year 2008-2009 and claimed input tax credit for the purchase made during the relevant month.



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WEB COP (ii) On 11.03.2009, the third respondent had issued a notice proposing to reverse the Input Tax Credit claimed by the petitioner to the tune of Rs.1,04,673/- for the month of September 2008 on the ground that the registration of the selling dealer was already cancelled. According to the learned counsel for the petitioner, as per Section 19(10)(a) of the Tax Value Added Act, 2006, the only condition imposed for claiming input tax credit is to produce the original tax invoice. In the present case, though the petitioner had furnished the original tax invoice issued by the wholesale dealer namely M/s.Smart Trading Company Madurai, the same has not been accepted by the authorities on the ground that the registration of the selling dealer was already cancelled and was not subsisting on the date when the petitioner had effected purchase.

Contentions of the learned counsels:

3. According to the learned counsel for the writ petitioner, it is impossible to verify about the validity/subsistence of the registration of the selling dealer. He had further contended that the petitioner is a bonafide purchaser. In case, if the input tax credit is reversed, the tax paid towards the purchase effected by him will result in forfeiting under Section 40 of the Act. As a consequence of the impugned provision, for a single transaction, a tax would be levied at two



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points which is quite contrary to the object of Tamil Nadu Value Added Tax Act, 2006. He had further contended that the said provision is in violation of Article 14 and 301 of the Constitution of India.

4.The learned Additional Government Pleader appearing for the respondents relying upon his counter and contended that the registration of the whole sale dealer was cancelled on 21.04.2008 itself and the petitioner is said to have purchased from the said whole sale dealer in September 2008. He had further contended that the seller dealer is a non-existing dealer and thereby, assessing authority proposed to reverse the claim of Input Tax Credit to the extent of Rs.1,04,673/- under Section 19(16) of TNVAT Act 2006 by an audit notice dated 11.03.2009.

5.The learned Additional Government Pleader had contended that the audit notice issued on 11.03.2009 would not amount to double taxation, in view of the fact that the wholesale dealer (whose registration has been cancelled) has not paid any tax at all. He had further contended that when the petitioner seeks to take advantage of Section 19 TNVAT Act 2006, he is bound to adhere to the condition imposed under the said section for availing Input Tax Credit. The petitioner has not chosen to send any reply to the notice dated 11.03.2009 and instead he had filed the present writ petition challenging Section 19(15) of the



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said Act.

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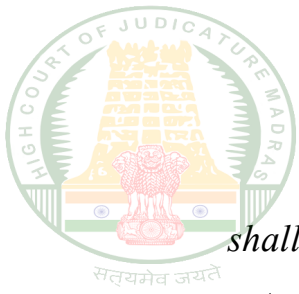
6. The learned Additional Government Pleader further relied upon the judgement of the Hon'ble Supreme Court reported *in (2016) 15 SCC 125 (Jayam and Company Vs. Assistant Commissioner and another)* which was followed *in (2019) 13 SCC 225 (Ald Automotive Private Limited Vs. Commercial Tax Officer now upgraded as Assistant Commissioner (CT) and others)* and contended that no grounds have been made out by the writ petitioner for declaring Section 19(15) of Tamil Nadu Value Added Tax Act, 2006 as unconstitutional. Hence, he prayed for dismissing the writ petition.

7. We have carefully considered the submissions made on either side and perused the material records.

Discussion:

8. Section 19(15) of the Tamil Nadu Value Added Tax Act, 2006 is extracted as follows:

“19(15) Where a registered dealer has purchased any taxable goods from another dealer and has availed input tax credit in respect of the said goods and if the registration certificate of the selling dealer is cancelled by the appropriate registering authority, such registered dealer, who has availed by way of input tax credit, shall pay the amount availed on the date from which the order of cancellation of the registration certificate takes effect. Such dealer



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shall be liable to pay, in addition to the amount due, interest at the rate of one and a quarter percent, per month, on the amount of tax so payable, for the period commencing from the date of claim of input tax credit by the dealer to the date of its payment.”

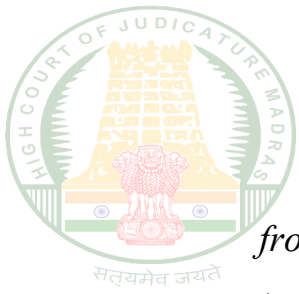
9. The writ petitioner herein being a registered dealer had effected purchase from the wholesale dealer namely M/s. Smart Trading Company, Madurai in September 2008. It is not in dispute by the writ petitioner that the registration of the wholesale dealer has been cancelled by the authorities on 21.04.2008 itself.

10. Section 40 of the Tamil Nadu Value Added Tax Act, 2006 is extracted as follows:

40. Collection of tax.-- (1) *No person, who is not a registered dealer, shall collect any amount by way of tax or purporting to be by way of tax under this Act; and no registered dealer shall make any such collection except in accordance with the provisions of this Act and the rules made there under:*

Ex planation.- For the purposes of sub-section (1), any State Government or the Central Government, or any dealer shall be deemed to be a registered dealer.

(2) *If any person or registered dealer collects any amount by way of tax or purporting to be by way of tax, in contravention of the provisions of sub-section (1), whether or not any tax is due*



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from such person or dealer under this Act in respect of the transaction in which he collects such amount, the assessing authority may, after giving such person or dealer a reasonable opportunity of being heard, by order, in writing, impose upon him by way of penalty a sum, which shall be, -

(i) where the excess amount has been collected in the bona fide belief that it had to be collected, one hundred per cent of the amount collected;

(ii) where the excess amount has been collected wilfully and knowing that it was not due to be collected, one hundred and fifty per cent of the amount collected:

Provided that no proceedings under this sub-section shall be commenced after a period of 1 [six years from the date of assessment:

Provided further that no prosecution for an offence under sub-section (2) of section 71 shall be instituted in respect of the same facts on which a penalty has been imposed under this sub-section.”

11.A combined reading of Section 19(15) and Section 40 of the Act will clearly indicate that in order to avail Input Tax Credit, a registered dealer has to furnish the original tax invoice of the sale evidencing amount of Input Tax and in case where registration certificate of the selling dealer is cancelled by the appropriate authorities, the purchasing dealer who had availed by way of Input

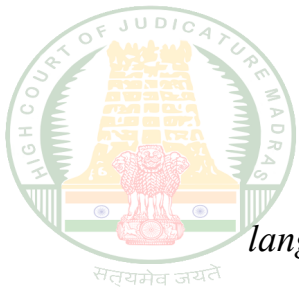


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Tax Credit shall pay the amount availed on the date from which the order of cancellation of registration certificate tax effected. Apart from that, the purchasing dealer shall be liable to pay interest also. Section 40 prohibits an unregistered dealer from collecting any amount by way of tax.

12. The Hon'ble Supreme Court in a judgment reported in **(2016) 15 SCC 125 (Jayam and Company Vs. Assistant Commissioner and another)** in paragraph No.12 has held as follows:

“12. It is a trite law that whenever concession is given by statute or notification etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the 'dealers' to get the benefit of ITC but its a concession granted by virtue of Section 19. As a fortiori, conditions specified in Section 10 must be fulfilled. In that hue, we find that Section 10 makes original tax invoice relevant for the purpose of claiming tax. Therefore, under the scheme of the VAT Act, it is not permissible for the dealers to argue that the price as indicated in the tax invoice should not have been taken into consideration but the net purchase price after discount is to be the basis. If we were dealing with any other aspect dehors the issue of ITC as per the Section 19 of the VAT Act, possibly the arguments of Mr. Bagaria would have assumed some relevance. But, keeping in view the scope of the issue, such a plea is not admissible having regard to the plain



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language of sections of the VAT Act, read along with other provisions of the said Act as referred to above.”

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13. The said judgment of the Hon'ble Supreme Court was quoted an approval in **(2019) 13 SCC 225 (Ald Automotive Private Limited Vs. Commercial Tax Officer now upgraded as Assistant Commissioner (CT) and others)**. Therefore, it is clear that when a registered dealer claims any benefit under Section 19 of TNVAT Act 2006, he has to strictly adhere to the condition laid down in the said section. In the present case, admittedly, the petitioner has not produced the original tax invoice from a registered dealer and therefore, he cannot complaining that the authorities are attempting to reverse the Input Tax Credit in his favour. In fact, the petitioner has effected purchase five months after cancellation of the registration of the selling dealer. Since the registration of the selling dealer had already been cancelled in April 2008, he would not have paid the tax. Therefore, the allegation of the petitioner that the notice issued by the respondent authorities for reversing the Input Tax Credit would amount to double taxation is not legally sustainable.

14. Though the petitioner has challenged the constitutional validity of a fiscal legislation, neither the grounds nor the submissions made on the side of



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the writ petitioner point out violation of any constitutional provisions. The

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present writ petition has been filed only to drag on the proceedings initiated by

the respondent authorities for reversal of the Input Tax Credit.

15. We do not find any merit in the writ petition. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.)

(R.V.J.)

24.01.2024

Index :yes
Internet :yes
NCC : Yes/No
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**D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR, J.**

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Pre-delivery Order made in
W.P(MD).No.12333 of 2009
and MP(MD).No.1 of 2009

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