

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4176 of 2014
and
M.P.No.2 of 2014

M/s.Nezone Tubes Limited,
Rep., by its Authorised Signatory,
Mr.M.G.Muruganandam,
Plot No.M-4, Phase III,
Spicot Indl., Complex, Ranipet,
Walajah Taluk-632 403.

.. Petitioner

-vs-

The Assistant Commissioner (CT),
Ranipet (SIPCOT).

.. Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the respondent in TIN No.33314363951/2013-14 and quash the impugned proceedings dated 01.2014 signed on 21.01.2014.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.V.Veluchamy,
Government Advocate

ORDER

The impugned order dated January, 2014 is challenged in this writ petition.

2.The core issue raised in this writ petition is whether the benefit of input tax credit is to be extended in respect of the transactions occurred prior to the issue of amendment in the Tamil Nadu Act 5 of 2015.

3.The learned counsel appearing on behalf of the petitioner mainly contended that the amendment was effected by way of rectification of an anomaly and therefore, it cannot be construed as a new policy. Thus, the benefit of Input Tax Credit granted pursuant to the amendment is to be extended so as to cover the transactions took place prior to the insertion of the amendment.

4.The learned Senior Counsel contended that the issue involved in this writ petition was already dealt with elaborately by the Madurai Bench of this Court in a batch of Writ Petitions led by W.P.(MD).No.15103 of 2015 and

the order was pronounced on 30.08.2019. Further, the respondent Department has also not preferred any further appeal challenging the said order and therefore, the order became final and the said benefit is to be extended to the petitioner herein.

5.The learned Government Advocate for the respondent could not be able to object the said contentions raised on behalf of the writ petitioner. Thus, this Court is inclined to follow the decision in the case cited supra. The relevant paragraphs of the said order are extracted hereunder:

"7. The claim of the assessee/petitioner was that with the substitution of sub clause (v) of Section 19(2), the benefit of ITC was available in respect of inter-State transactions whether covered by C-Form or not, in terms of both Section 8(1) and (2) of the CST Act. In short, the lis for consideration before me is 'whether the provisions of Section 19(2)(v) of the Tamil Nadu Value Added Tax Act, 2006 as amended by the Tamil Nadu Value Added Tax Act (Amendment Act, 2015) are retrospective and would apply to earlier periods of assessment or prospective, applying to the period

commencing 01.04.2015 only'.

.....

18. An understanding of the provisions of Section 8 of the CST Act, both sub-sections (1) and (2), is required, to examine the purpose of the substitution and to determine whether such substitution was intended to take effect from the date of inception of the enactment or the date of amending Act and the provision is thus extracted below:

8. Rates of tax on sales in the course of inter-State trade or commerce.— (1) Every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall be three percent, of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower: Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this sub-section. (2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within subsection (1), shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State.

19. Section 8(1) of the CST Act provides the benefit of concessional rate of tax, upon production of a statutory Declaration form, to an interstate transaction with a registered dealer, and relating to specified goods. Section 8(2) stipulates that an interstate transaction with an unregistered dealer shall be visited with the same rate of tax as applicable to a domestic transaction involving identical goods. While Section 19(2)(v) extended input tax credit in respect of the transaction under Section 8(1), the same benefit was unavailable to the identical transaction with an unregistered dealer, taxable in terms of Section 8(2) of the CST Act. Though the benefit of ITC was initially restricted as an inducement to dealers to transact with registered dealers alone, Legislature has broadened, in its wisdom, the grant of benefit of ITC to transactions with unregistered dealers as well, albeit in 2015. Having taken such a decision in principle, there is no rhyme or reason to restrict the benefit only from the date of substitution. Such restriction would discriminate against transactions under Section 8(2) for the prior period, apart from leading to a dichotomy in the manner in which transactions in terms of Section 8(2)

pre and post 01.04.2015 are assessed to tax.

20. It is also not the case of the revenue that the amendment has been propelled in 2015 for a specific reason or logic and the inevitable conclusion I am led to is that legislature corrected an anomaly in 2015 by way of the amendment in question, bringing transactions under Section 8(2) also within the beneficial sweep of 19(2)(v).

21. Since the substitution in the present case only seeks to set right an anomaly it necessarily has to be effective from the date of inception of the Act itself, retrospectively.

22. These Writ Petitions are allowed and the issue framed for resolution is answered in favour of the petitioners. No costs. Connected Miscellaneous Petitions are closed."

6. In view of the ratio laid down in the decision cited supra, the impugned order in this writ petition is quashed and the writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

14.07.2021

Index : Yes
Speaking Order

abr

S.M.SUBRAMANIAM, J.

(abr)

To

The Assistant Commissioner (CT),
Ranipet (SIPCOT).



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