Madras High Court
Madras High Court
Usa Agencies vs The Commercial Tax Officer on 17 July, 2013
DATED :- 17.07.2013

Coram

The HONOURABLE MRS.JUSTICE R.BANUMATHI

and

The HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.902, 1202, 2016, 2233, 3732, 4329 to 4331, 5766, 20302, 25124 and 26281 of 2009;

2832, 5385, 5386, 5770, 5955, 6790, 6791, 8717, 8718, 9175, 9176, 9462, 9463, 10027, 11715, 11724, 11726,12101 to 12103, 12502, 13442, 13468, 14461, 14732, 14993, 15475, 16639, 16651, 17066, 18160, 18161, 21504 to 21508, 22332 to 22335, 22580, 22581, 23808, 23809, 25945, 27966 and 27967 of 2010;

9 to 12, 47, 1140 to 1142, 1838, 3567, 10275, 10648 to 10652,10667, 10673, 10674, 11745, 13061, 13062, 14049, 14833, 15821, 15842 to 15846, 16691, 17437, 17438, 18132, 18133, 19065, 19160, 19919 to 19922, 20056 to 20060,20124, 20178 to 20180, 20779, 20780, 21514 to 21516, 21571, 21829, 22328, 22329, 22925,23123 to 23127, 24286, 24631, 25329, 25376 to 25380, 25777 to 25779, 25802, 26646, 26678, 26679, 26994, 26995, 28350, 28351, 29716 and 29717 of 2011; 2, 3, 7, 10, 11, 22 to 24, 842, 843, 2733, 2734, 2799, 2800, 3231, 3232, 3736 to 3738, 4022, 4387, 4509, 4648, 4914, 4915, 6197, 6198, 7530 to 7532, 7539, 7540, 7873, 7883, 9935 to 9938, 10555 to 10557, 10564, 10565, 10912 to 10914, 12119 to 12123, 12549, 12550, 13044, 13045, 14535, 15804, 17118, 18530, 18743, 19005, 19756, 19775, 19891, 20806, 20864, 20921, 22498, 23381, 23779, 23822, 24060, 26806, 27968, 27969, 28897 to 28900, 30615, 30621, 31817, 31818, 31967, 33574, 33575, 33626 to 33630, 33863, 34543 and 34544 of 2012; and

1833 to 1835, 1932, 1933, 4655, 4656, 5269 to 5271, 5387 to 5390, 5568, 5569, 5668, 5669, 6302, 9524 to 9526, 10206, 12584, 14807, 14808, 15662, 15663, 15678, 16452, 16453, 16796, 16797, 16992, 16993 and 17993 to 17995, 18161, 18162, 19313 and 19314 of 2013

W.P.No.902 of 2009:

USA Agencies,

rep. by its Proprietrix A.Umamaheswari,

No.139-A, Therkukadu,

Attur Town, Attur Taluk,

Salem District. ... Petitioner.

Vs.

The Commercial Tax Officer,

Attur (Rural) Assessment Circle,

Attur. ... Respondent.

For Petitioner in W.P.Nos. : Mr.C.Natarajan,

20302, 25124 and 26281 Sr.Counsel

of 2009, 10275,10648 to 10652, for

13061, 13062 and Mr.N.Inbarajan

15842 to 15846 of 2011

and 4022, 19775 of 2012

16796 and 16797 of 2013

For Petitioner in W.P.Nos. : Mrs.R.Hemalatha

2016, 2233, 3732 and 5766

of 2009, 5770, 14461,

15475, 16639, 18160,

and 18161 of 2010; 9 to 12,

10667, 10673, 10674, 11745,

16691, 19919 to 19922, 20056

to 20060, 20779,

20780, 22328, 22329, 24631,

25777 to 25779, 26994 and

26995 of 2011, 10, 11,

2799, 2800, 4387, 4509,

4648, 6197, 6198, 7530 to

7532, 7539, 7540, 9935 to,

9938, 13044, 13045, 18530,

18743, 19005, 19756, 22498,

30615, 33574, 33575 and

33863 of 2012 and 4655, 4656,

5668, 5669, 9524 to 9526,

10206, 15662, 15663, 16992,

16993 and 17993 to 17995 of 2013;

For Petitioner in W.P.No. : Mr.K.Vaitheeswaran

25329 of 2011

For Petitioner in W.P.Nos. : Mr.P.Rajkumar

2832, 12101 to 12103,

12502 and 22332 to 22335

of 2010; 1838, 15821,

21514 to 21516, 21571,

21829, 24286, 26646,

26678 and 26679 of 2011

and 7883, 20864, 20921,

23381 and 23779 of 2012 and

5269 to 5271 of 2013

For Petitioner in W.P.Nos. : M/s.Lakshmi Sriram

5385, 5386 and 21504

to 21508 of 2010

For Petitioner in W.P.No. : Mr.P.V.Ravi Kumar

5955 of 2010

For Petitioner in W.P.Nos. : M/s.Aparna Nandakumar

8717 and 8718 of 2010

For Petitioner in W.P.Nos. : Mr.S.Prabhakaran

9175, 9176, 9462

and 9463 of 2010

For Petitioner in W.P.Nos. : M/s.Hema Muralikrishnan

6790 and 6791 of 2010

For Petitioner in W.P.Nos. : Mr.K.Soundararajan

10027 of 2010, 20124 of

2011 and 7 and 22 to

24 of 2012

For Petitioner in W.P.Nos. : Mr.S.Ramanathan

4329 to 4331 of 2009,

11715, 11724, 11726,

13442, 13468 and

14993 of 2010; 28350 and

28351 of 2011 and 842

and 843 of 2012

For Petitioner in W.P.Nos. : Mr.R.Senniappan

902, 1202 of 2009, 14732,

23808 and 23809 of 2010;

17437, 17438, 19160, 22925

and 25802 of 2011, 3231,

3232, 4914, 4915, 31967,

34543 and 34544 of 2012;

1833 to 1835, 1932, 1933,

6302 and 15678 of 2013

For Petitioner in W.P.No. : Mr.B.Raveendran

16651 of 2010

For Petitioner in W.P.No. : Mr.P.R.Kumar

17066 of 2010

For Petitioner in W.P.Nos. : Mr.L.Muralikrishnan

22580 and 22581 of 2010

For Petitioner in W.P.No. : Mr.S.P.Radhakrishnan

47 of 2011 and

Mr.A.Chandrasekaran

For Petitioner in W.P.No. : Mr.T.Pramodkumar Chopda

25945, 27966 and 27967

of 2010 and 19065 of 2011

For Petitioner in W.P.Nos. : Mr.P.Srinivas

1140 to 1142 of 2011

For Petitioner in W.P.No. : Mr.A.Thiagarajan

3567 of 2011

For Petitioner in W.P.Nos. : Mr.Bakthasiromani

14049, 14833, 18132,

18133 and 23123 to 23127

of 2011

For Petitioner in W.P.Nos. : Mr.A.Ravichandran

20718 to 20180 of 2011,

7873 and 30621 of 2012,

and 12584 of 2013

For Petitioner in W.P.Nos. : Mr.S.P.Asokan

25376 to 25380 of 2011;

2733, 2734, 3736, 10555

to 10557, 10564, 10565,

12119 to 12123, 12549,

12550, 15804, 17118, 19891,

27968, 27969, 28897 to

28900, 31817 and 31818

of 2012 and 3737, 3738,

5387 to 5390, 16452 and

16453 of 2013

For Petitioner in W.P.Nos. : Mr.P.V.Sudakar

29716 and 29717 of 2011

For Petitioner in W.P.Nos. : Mr.M.Venkadeshan

2 and 3 of 2012

For Petitioner in W.P.Nos. : Mr.R.Mahadevan

10912 to 10914 of 2012

For Petitioner in W.P.No. : Mr.V.Sundareeswaran

14535 of 2012 for

M/s.K.Venkatasubramanian

For Petitioner in W.P.No. : Mr.D.Vijayakumar

20806 of 2012

For Petitioner in W.P.No. : M/s.Maha Associates

23822 of 2012

For Petitioner in W.P.No. : Mr.S.N.Kirubanandam

24060 of 2012

For Petitioner in W.P.No. : Mr.S.Sivanandam

26806 of 2012

For Petitioner in W.P.Nos. : Mr.M.Desingu

33626 to 33630 of 2012

For Petitioner in W.P.Nos. : M/s.Sarvabhauman

5568 and 5569 of 2013 Associates

For Petitioner in W.P.Nos. : Mr.A.P.Srinivas

14807 and 14808 of 2013

For Respondents : Mr.A.L.Somayaji,

Advocate General

assisted by

Mr.V.Haribabu,AGP(Taxes)

Mr.Cibi Vishnu,AGP(Taxes)

Mr.Manohara Sundaram,

Govt.Advocate (Taxes)

Mr.Kanmani Annamalai,

Govt.Advocate (Taxes) Mr.J.Adithya Reddy,

Govt.Advocate (Taxes)

and

Mr.A.R.Jayaprathap,

Govt. Advocate (Taxes)

COMMON ORDER

R.BANUMATHI, J.

and

T.S.SIVAGNANAM, J.

Challenge in these writ petitions is the vires of Section 19(11) of Tamil Nadu Value Added Tax Act, 2006 (for short TN VAT Act) which prescribes modalities and time frame as regards availment or enjoyment of the Input Tax Credit as being inconsistent with Section 3 and the general scheme of TN VAT Act as being arbitrary and irrational infringing the rights of the petitioners under Article 14 and 19(1)(g) of the Constitution of India.

2. In the other set of writ petitions, petitioners seek for Writ of Certiorarified Mandamus to quash the orders/show cause notices issued by the concerned Assessing Authority denying the Input Tax Credit taken in the revised returns invoking Section 19(11) of TN VAT Act.

3. Petitioners are carrying on business in various goods and are registered dealers under the provisions of TN VAT Act. Petitioners are periodically filing returns as per the provisions of TN VAT Act and the Rules thereon. Petitioners filed return and the same was not accepted by the Authorities on one ground or the other. The petitioners who are registered dealers filed revised return rectifying the mistakes in the return already filed claiming Input Tax Credit. The same was denied invoking the provisions of Section 19(11), which provides that if the registered dealers fail to claim the 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 from the date of purchase, whichever is later.

4. According to petitioners there is no rule prescribed regarding the manner for the tax reduced under Section 3(3) and manner will not include time limit, but indicates mode of doing and Section 19(11) cannot whittle down the substantive right. Petitioners contend that Sections 20, 21, 22 and 25 of TN VAT Act, which deal with assessment of tax , filing of returns , procedure to be followed in assessment" do not provide for any time limit. While so, the time limit for securing Input Tax Credit under Section 19(11) of TN VAT Act is irrational and arbitrary. Section 19(10)(a) of TN VAT Act gives legal right to Input Tax Credit on receipt of tax invoice and Section 19(10)(a) and Rule 10(2) does not give time limit; whereas Section 19(11) of TN VAT Act prescribes time limit which is arbitrary and irrational offending Article 14 of the Constitution of India and has no nexus to any object of law. While the relevant provisions for assessment does not prescribe the time limit for assessment, Section 19(11) fixes time limit in an arbitrary manner. Contending that Section 19(11) is unworkable and is inconsistent with the general scheme of the Act, petitioners have challenged the vires of Section 19(11) of TN VAT Act.

5. Respondents resisted the writ petitions contending that there is nothing unreasonable or arbitrary in prescribing the time limit for claiming Input Tax Credit in respect of any transaction of taxable purchase. Since intention of the Legislature is to avoid misuse and tax evasion, the time limit prescribed under Section 19(11) of TN VAT Act for claiming Input Tax Credit cannot be termed as unreasonable restrictions. If indefinite period is allowed, it is likely to be misused apart from the fact that after the lapse of long time, the related transactions cannot be verified.

6. We have heard Mr.C.Natarajan, learned Senior counsel, Mrs.R.Hemalatha, Mr.S.P.Asokan, Mr.Pramodkumar Chopda, Mr.V.Sundareswaran, Krishna Srinivas and Mr.P.Rajkumar, learned counsels appearing for the petitioners and the other learned counsels who adopted the arguments of the learned Senior Counsel.

7. Submissions:-

The learned Senior Counsel Mr.C.Natarajan interalia contended as follows:- That sub-sections (2) and (3) of Section 3 of the VAT Act together constitute the charging section regarding the scheme of tax levy on the sale of goods specified in Part B or Part C of the First Schedule to the Act. The tax payable under Section 3(2) shall be reduced in the manner prescribed to the extent of tax paid on purchase of goods is premptory and sub-section (3) of Section 3 in a way is a proviso to Section 3(2) of the TN VAT Act. It is submitted that there is no rule prescribed regarding the manner for the tax reduced under Section 3(3) and manner will not include time limit, but indicates mode of doing. In support of such contention, reliance was placed on the decision of the Hon'ble Supreme Court in Sales Tax Officer vs. K.I.Abraham ([1967] 20 STC 367). It is further submitted that Section 19(11) is a procedural provision and it has to make the Charging Section effective and not to whittle down or render ineffective the tax reduced for the sales under Section 3(2) to the extent of tax paid on purchases. Reliance was placed on the decision of the Hon'ble Supreme Court in Murarilal Mahavir Prasad vs. B. R. Vad ([1976] 37 STC 77) and Govind Saran Ganga Saran vs. Commissioner of Sales Tax & Ors., [(1985) 60 STC 1 (SC)].

8. The provisions of the TN VAT Act contemplate yearly assessment. Year is defined by Section 2(42). Section 3(1) speaks of turnover for a year . Annual assessments and reassessments are provided by the provisions such as Sections 20,22,25,27 and 29. Taking us through the above provisions, the learned Senior Counsel submitted that the assessing authority is bound by the provisions of Section 3, including sub-sections (2) and (3) to determine the tax payable by the assessee and the right to tax reduction under Section 3(3) is indefeasible on proof of tax having been paid by a dealer on his purchase. In support of his contention that input credit is a substantive right and is indefeasible, reference was made to the decision of the Hon'ble Supreme Court in Commissioner of Central Excise vs. Home Ashok Leyland Limited [2007 (210) E.L.T. 178

(SC)].

9. Without prejudice to the above submission, it was submitted that Section 19(11) deals with only one situation where the dealer fails to claim the credit inspite of having the tax invoice of the selling dealer, even when tax paid to the vendor and corresponding input credit stood ascertained at the time of filing the return. Reference was made to Blacks Law Dictionary and Advanced Law Lexicon to state that failure and default are synonymous expressions. Further, Section 19(11) does not apply in situations where there is no failure to seek credit, because the additional tax liability was incurred by the vendor, either due to tax rate or price is assessed or reassessed or revised under Sections 22(4), 27(1)(b), 29 or due to revision of assessment under Section 53 etc. Equally, it does not apply, where liability of vendor is enhanced or modified in the process of appeal such as Section 51 or Section 59. Section 19(11) cannot be read to provide a limitation as no law of limitation can start running before accrual of right, as limitation operates to enforce existing right and not where, there is no right.

10. It is further submitted that Section 19(11) is directory and not mandatory. The question whether shall is mandatory or directory depends on the language, intention of legislature and scheme and design and whether consequences spelt. Reliance was placed on the decision of the Hon'ble Supreme Court in State of U.P. vs. Manbodhan Lal [AIR 1957 SC 912]. It was submitted by one of the counsels that the petitioners mainly insist on the alternative prayer to declare Section 19(11) as directory and not mandatory instead of striking down the provision.

11. It is submitted that Section 19(11) cannot be invoked, where the compliance with the same is impossible of accomplishment such a situation where the claim itself crystallised well after the period. It is further submitted that the impugned provision cannot be read in isolation, but harmoniously construed with every other provision and the provision leads to its repugnancy to various provisions of the Act including the charging provision. It is the further submission that the revenue by interpreting the provision as inflexible, render it arbitrary and irrational requiring the same to be invalidated as infringing Article 14 of the Constitution. In this regard, reference was made to the decision of the Hon'ble Supreme Court in Union of India vs. A.Sanyasi Rao ([1996] 219 ITR 330 (SC)). Reference was also made to sales pertaining to Inter-State transactions to demonstrate that great prejudice has been caused to the dealers.

12. The learned Advocate General appearing for the respondents submitted that Section 3(2) is a complete charging Section and it provides for all the components that constitute a valid charging Section and there is no need to read the provision with any other provision to arrive at the nature of levy under the Act. It was contended that Section 3(3) pre-supposes charge and liability to pay tax, as the provision begins with the word that tax payable under sub-section (2)..... thereby implying that liability to pay tax has already arisen by virtue of Section 3(2). The learned Advocate General placed reliance on the decision of the Bombay High Court in M/s.Mahalaxmi Cotton Ginning Pressing and Oil Industries vs. the State of Maharastra and Ors., [(2012) 51 VST 1 (Bom) = MANU/MH/0620/2012] and submitted that it is squarely applicable to the cases on hand. Reliance was also placed on the decision of the Division Bench of the Kerala High Court in Mohammed Haji Manachithodi Agencies vs. State of Kerala [2012 (3) KLT (SN) 17] and State of Rajasthan vs. Ghasilal, [AIR 1965 SC 1454]. It is urged that Section 3(3) grants a concession which can only be used to compute tax liability and it merely provides a factor to be considered at the time of computation of liability that has already arisen under Section 3(2). That the right under Section 3(3) is a concession and it is strictly to be governed by the manner prescribed under the statute which is Section 19 and the claim for Input Tax Credit is neither a fundamental right nor a common law right. It was submitted that the usage of the word in the manner prescribed in Section 3(3) has to be read to mean the prescription in Section 19 including the time limit in Section 19(11) and the Input Tax Credit claim is neither absolute nor indefeasible.

13. The learned Advocate General made meticulous submission that the right to claim Input Tax Credit being a concession is available only in situation contemplated under the statute and if the right is not available in a given situation, it only means that the legislature did not intend to grant the right to claim Input Tax Credit in

such situations. It is further submitted that all situations as claimed by the petitioners are not covered by Section 19(11), are situation where the tax liability of the vendor increases due to events like price variation, revision of assessment, reassessment etc., and in such situation whether increase in tax liability is transferred by the vendor to the purchaser is entirely a matter of contractual arrangement between the parties. Section 19 is mandatory and the word shall used in the statute intended the provision to be mandatory. According to respondents, the provision for consequences for failure in the form of lapse of credit or reversal of credit in other provisions such as Section 18(3), 19(19) etc., are not relevant inasmuch as under all those provisions the right to claim Input Tax Credit has already accrued to the assessee and the same is to be adjusted or refunded, unlike Section 19(11) which is a pre-condition for claiming credit.

14. Upon consideration of the submissions and materials placed on record, the following questions arise for consideration in these writ petitions:-

(1)Whether Section 19(11) of TN VAT Act is violative of Article 265 and 360A of the Constitution of India and is liable to be struck down?

(2)Whether Section 19(11) is to be struck down on the ground that Section 19(11) is inconsistent with the Charging Section sub-section (2) of Section 3 and whether Section 19(11) is inconsistent with the scheme of the Act like Sections 21, 22, 27 and 29 of TN VAT Act? (3)Whether Section 19(11) is only directory and not mandatory?

15. Introduction Sales Tax Regime to Value Added Tax (VAT):-

Value Added Tax is modern and progressive tax system now adopted in over 130 countries around the world. In India, this was initially tried out on Central Excise and after its success, extended to Service tax levy. Since at both levels Value Added Tax (VAT) has been successfully integrated in the tax system, the same has now been extended to state sales tax levies. Tax on sale within the State is a State subject. Over the period, many distortions had come in the regime of sales tax due to heterogeneity prevailed in the structure of sales tax. In the Sales Tax regime, there were problems of double taxation of commodities and multiplicity of taxes resulting in a cascading tax burden. Many steps were taken to remove the distortion and rationalise the tax structure since 1999. It was decided to introduce uniform State Level VAT.

16. Introduction of VAT was difficult in India as sales tax is a State subject and sales tax on sales within the State can be levied under Entry 54 of List II by respective State Governments. Initially the States Governments were reluctant to introduce VAT in their respective States. After persuasion by Central Government, all States ultimately agreed to introduce the State Level Sales Tax - VAT at the Conference of Chief Ministers of all States at Delhi in November, 1999. A High Power Committee (termed as "Empowered Committee") consisting of senior representatives of all 29 States was constituted under Chairmanship of Dr.Asim Dasgupta. Introduction of VAT was delayed on several occasions. Finally, it was announced that all States agreed to introduce VAT with effect from 1.4.2005. A "White Paper" was released by the Empowered Committee on 17.1.2005 and the said White Paper is a Policy Document indicating the basic policies of the State Sales Tax VAT. The White Paper circulated by the Empowered Committee of State Finance Ministers furnished the following rationale for the introduction of VAT: "In the existing sales tax structure, there are problems of double taxation of commodities and multiplicity of taxes, resulting in a cascading tax burden. For instance, in the exiting structure, before a commodity is produced, inputs are first taxed, and then after the commodity is produced with input-tax load, output is taxed again. This causes an unfair double taxation with cascading effects. In the VAT, a set-off is given for input tax as well as tax paid on previous purchases. In the prevailing sales tax structure, there is in several States also a multiplicity of taxes, such as turnover tax, surcharge on sales tax, additional surcharge, etc. With introduction of VAT, these other taxes will be abolished. In addition, Central sales tax is also going to be phased out. As a result, overall tax burden will be rationalised, and prices in general will also fall. Moreover, VAT will replace the existing system of inspection by a system of built-in self-assessment by the

dealers and auditing. The tax structure will become simple and more transparent. That will improve tax compliance and also augment revenue growth. Thus, to repeat, with the introduction of VAT, benefits will be as follows: a set-off will be given for input tax as well as tax paid on previous purchases

other taxes, such as turnover tax, surcharge, additional surcharge, et., will be abolished.

overall tax burden will be rationalised.

prices will be self-assessment by dealers

transparency will increase

there will be higher revenue growth"

17. In order to examine the controversy raised in these writ petitions and to test the validity of the impugned provision, a bird's eye view of the design of the VAT Act, its concept, coverage, the compulsory requirement to be complied with and other relevant details has to be looked into. The essence of VAT is in providing set off for the tax paid earlier and this is given effect through the concept of Input Tax Credit/rebate. VAT is based on value addition to goods and related VAT liability of the dealer is calculated by deducting Input Tax Credit from tax collected on sales during the payment period. The Input Tax Credit was available on both manufacturer and the trader for purchase of inputs/supplies meant for both sale within the State and sale in the course of inter-State Trade. Consequently, it reduced the immediate tax liability. In cases where, tax credit exceeds the tax payable on sales in a month, the excess credit will be carried over. The entire design of VAT with Input Tax Credit is crucially based on documentation of tax invoice, cash memo or bill. 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. Failure to comply with the mandatory requirements attracts penalty. The basic simplification of VAT is that VAT liability will be self assessed by the dealer themselves in terms of submissions on returns upon setting of the credit limit. This has done away with the requirement of compulsory assessment as in the sales tax regime. The correctness of self assessment is subject to check through the departmental audit. Therefore, the net effect of the VAT system is to rationalise the tax burden and bring down in general the price level and to bring in simplicity and transparency in the tax structure thereby improving the tax compliance and eventually to ensure revenue growth. The above in broad terms is the concept of VAT.

18. There is distinction between the scheme of tax on sale of goods both under the VAT regime and under the Sales Tax Act existing prior to that. Under the Sales Tax Act except a few items, all other goods were taxable at the point of first sale in the State. Therefore tax was levied and collected only from the first seller. Contrary to this, the scheme under the VAT regime is that the tax collected by the first seller is given as Input Tax Credit to the second seller, and the tax paid by the second seller is given as Input Tax Credit to the third seller and ultimately the entire tax is borne by the consumer. In other words, the tax paid on the value addition by a series of dealers is ultimately passed on to the consumer and dealers get reimbursement of the tax paid by them.

19. All the States have implemented VAT and made provisions for Input Tax Credit as per their needs. Under the erstwhile Sales Tax regime, there was multiplicity of taxes like turnover tax, surcharge on sales tax, additional surcharge, etc., but with introduction of VAT, these other taxes have been abolished. As a result, over all tax burden will be rationalised and prices in general will also fall.

20. Questions No.1 and 2:-

Whether Section 19(11) is inconsistent with the Charging provision - Section 3(2) and the Scheme of the Act?

Tamil Nadu Value Added Tax Act, 2006 was enacted introducing VAT in the State of Tamil Nadu with effect from 1.1.2007. Section 2 of TN VAT Act defines as many as 44 terms. Section 2(15) defines dealer to mean any person who carries on the business of buying, selling, supplying or distributing goods directly or otherwise, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration and includes those authorities and persons as enumerated in clause (i) to clause (ix) of Section 2(15). Section 2(21) defines goods to mean all kinds of movable property other than newspapers, actionable claims, stocks and shares and securities and includes all materials, commodities and articles including the goods etc. Sub-section (24) of Section 2 defines "input tax" as the tax paid or payable under this Act by a registered dealer to another registered dealer on the purchase of goods including capital goods in the course of his business". Sub-section (28) of Section 2 defines "output tax" as "tax paid or payable under this Act by any registered dealer in respect of sale of any goods". Section 3 deals with "Levy of taxes on sales of goods". Sub-section (3) of Section 3 provides for availing Input Tax Credit. Sub-section (3) of Section 3 provides for reduction of tax payable by a dealer to the extent of tax paid on his purchase of goods .

21. Section 19 deals with Input Tax Credit and the conditions/requirements to be complied with for claiming Input Tax Credit. Section 20 deals with assessment of tax . Section 21 deals with filing of returns in the prescribed form . Section 22 deals with deemed assessment and procedure to be followed by the Assessing Authority . Section 27 deals with assessment of escaped turnover and wrong availment of Input Tax Credit . Section 53 deals with special powers of Joint Commissioner", who may on his own motion call for and examine any assessment or order, if such assessment or order or proceeding recorded prejudicial to the interest of the revenue.

22. Section 3 of TN VAT Act deals with levy of tax on sales of goods . The manner and extent to which a registered dealer who has paid tax as per the charging provision Section 3(2) would be entitled to credit has been spelt out in sub-section (3) of Section 3. Section 3 reads as under:- . Levy of taxes on sales of goods:

(1) (a) Every dealer, other than a casual trader or agent of a non-resident dealer, whose total turnover for a year is not less than rupees five lakhs and every casual trader or agent of a nonresident dealer, whatever be his total turnover, for a year, shall pay tax under this Act. (b) Notwithstanding anything contained in clause (a), every dealer, other than a casual trader or agent of a non-resident dealer, whose total turnover in respect of purchase and sale within the State, for a year, is not less than rupees ten lakhs, shall pay tax under this Act. (2) Subject to the provisions of sub-section (1), in the case of goods specified in Part - B or Part - C of the First Schedule, the tax under this Act shall be payable by a dealer on every sale made by him within the State at the rate specified therein. [Provided that all spare parts, components and accessories of such goods shall also be taxed at the same rate as that of the goods if such spare parts, components and accessories are not specifically enumerated in the First Schedule and made liable to tax under that Schedule.] (3) The tax payable under sub-section (2) by a registered dealer shall be reduced, in the manner prescribed, to the extent of tax paid on his purchase of goods specified in Part - B or Part - C of the First Schedule, inside the State, to the registered dealer, who sold the goods to him. .....

23. The essence of VAT is in providing set off for the tax paid earlier and this is given effect through the concept of Input Tax Credit. Input Tax Credit is given only to ameliorate the cascading effect of tax burden. By virtue of the Section 3(3), the tax payable by the registered dealer shall be reduced in the manner prescribed, to the extent of tax paid on his purchase of the goods specified in Part B or Part C, inside the State to the registered dealer, who sold the goods to him. Input Tax Credit is creature of Statute. Case of respondents is that petitioners have no absolute right to claim Input Tax Credit, but only a concession and when Input Tax Credit is only a concession, it is open to the Government to impose conditions for availing Input Tax Credit.

24. The controversy raised in these cases are whether Section 3(2) and Section 3(3) are both charging provisions. On behalf of the State, it is submitted by the learned Advocate General that Section 3(1) and 3(2)

are alone charging sections and sub-section (3) of Section 3 is not a charging section, but only contemplates set-off of the tax to the extent indicated and in the manner prescribed and Section 19 deals with the mechanism for availing Input Tax Credit.

25. Section 19 of TN VAT Act stipulates conditions for claiming Input Tax Credit. Section 19 reads as under:-

Section 19. Input tax credit.-

(1)There shall be input tax credit of the amount of tax paid or payable under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule : Provided that the registered dealer, who claims input tax credit, shall establish that the tax due on such purchases has been paid by him in the manner prescribed.

(2)Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of

(i)re-sale by him within the State; or

(ii)use as input in manufacturing or processing of goods in the State; or

(iii)use as containers, labels and other materials for packing of goods in the State; or

(iv)use as capital goods in the manufacture of taxable goods.

(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.

(vi)Agency transactions by the principal within the State in the manner as may be prescribed

(3) (a) Every registered dealer, in respect of purchases of capital goods (for use in the manufacture of taxable goods), shall be allowed input tax credit in the manner prescribed. (b) Deduction of such input tax credit shall be allowed only after the commencement of commercial production and over a period of three years in the manner as may be prescribed. After the expiry of three years, the unavailed input tax credit shall lapse to Government.

(c) Input tax credit shall be allowed for the tax paid under Section 12 of the Act, subject to clauses (a) and (b) of this sub-section.

(4) to (9) .....

(10) (a) The registered dealer shall not claim input tax credit until the dealer receives an original Tax Invoice duly filled, signed and issued by a registered dealer from whom the goods are purchased, containing such particulars, as may be prescribed, of the sale evidencing the amount of input tax. (b) 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 subject to such conditions as may be prescribed. (11)In case 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 from the date of purchase, whichever is later. (12) To (15) .....

(16) The input tax credit availed by any registered dealer shall be only provisional and the assessing authority is empowered to revoke the same if it appears to the assessing authority to be incorrect, incomplete or

otherwise not in order. (17) If the input tax credit determined by the assessing authority for a year exceeds tax liability for that year, the excess may be adjusted against any outstanding tax due from the dealer. (18) The excess input tax credit, if any, after adjustment under sub-section (17), shall be carried forward to the next year or refunded, in the manner, as may be prescribed. (19) Where any registered dealer has availed input tax credit and has goods remaining unsold at the time of stoppage or closure of business, the amount of tax availed shall be reversed on the date of stoppage or closure of such business and recovered. (20) Notwithstanding anything contained in this section, where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of the input tax credit over and above the output tax of those goods shall be reversed." The entire design of VAT is Input Tax Credit which is crucially based on documentation of Tax Invoice. The tax sufferance proved by original tax invoice, production of original invoice, filing of Returns as per Rule 7 of Tamil Nadu Value Added Tax Rules, maintenance of true, correct and complete accounts, claiming Input Tax Credit within the time stipulated are the essence of the claim for availing Input Tax Credit.

26. Sub-section (1) of Section 19 of TN VAT Act, 2006 provides for availment of Input Tax Credit in any month accrued on purchases made against the output tax due on sale by a registered dealer. Proviso to sub-section (1) of Section 19 stipulates that the registered dealer, who claims Input Tax Credit, shall establish that the tax due on such purchases has been paid by him in the manner prescribed. Sub-section (2) of Section 19 enumerates the transactions for which Input Tax Credit shall be allowed. Section 19(3)(a) and (4) provide for allowing Input Tax Credit. As per Section 19(3)(a) and (4), Input Tax Credit shall be allowed in the manner prescribed . Section 19 contains details of sales in respect of which Input Tax Credit is to be allowed and sales in respect of which Input Tax Credit is not to be allowed. Since Input Tax Credit shall be allowed only in the manner prescribed , the registered dealer cannot claim Input Tax Credit independent of Section 19 of TN VAT Act.

27. As per Section 19(11) of TN VAT Act, ... in case 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 from the date of purchase, whichever is later . Sub-section (1) of Section 19 contemplates allowing Input Tax Credit of the amount of tax paid or payable to the extent of the amount of Input Tax Credit accrued on purchases. Section 19(11) prescribes the modalities and time frame as regards availment or enjoyment of the said concession. By Section 19(11) Legislature wanted to set up a time-frame for availment of Input Tax Credit accrued on purchases before the end of the financial year or ninety days from the date of purchase whichever is later.

28. Section 3(1)(a) deals with persons who are liable to pay tax under TN VAT Act i.e. every resident dealer whose turnover is above Rs.5 lakhs shall pay tax under the Act. As per Section 3(1)(b), every dealer who purchases goods within the State and effects sale of those goods within the State shall pay tax under the Act, if his turnover is more than Rs.10 lakhs. Sub-section (2) of Section 3 is the Charging Section. As per sub-section (2) of Section 3, ... subject to the provisions of sub-section (1), in case of goods specified in Part-B or Part-C of the First Schedule, the tax under TN VAT Act shall be payable by a dealer on every sale made by him within the State at the rate specified therein . Sub-section (3) of Section 3 provides for availing Input Tax Credit by a registered dealer to the extent of tax paid on his purchase of goods specified in Part-B or Part-C of the First Schedule, inside the State to the registered dealer, who sold the goods to him . The charging provision in the Statute is sub-section (2) of Section 3.

29. Learned Senior Counsel for petitioners contended that sub-sections (2) and (3) of Section 3 are the Charging Section and sub-section (3) of Section 3, which provides for availing Input Tax Credit is an integral part of sub-section (2) of Section 3. Learned Senior Counsel submitted that while tax payable under sub-section (2) of Section 3 by a dealer on every sale made by him is mandatory, the dealer as of right is entitled to claim Input Tax Credit and therefore, the Input Tax Credit provided under sub-section (3) of Section 3 is not a concession, but is an indefeasible right. Learned Senior Counsel further contended that the substantive right of claiming Input Tax Credit under sub-section (3) of Section 3 of the Act cannot be

curtailed by imposing restrictions like Section 19(11) of TN VAT Act.

30. On a careful and closer reading of the provision, the position appears otherwise. Though in sub-section (3) the expression used is shall as regards the reduction in the tax payable to the extent of tax paid on purchase of goods inside the State such reduction is not automatic, but is in the manner prescribed under the Act. If such is the case, the only plausible interpretation that could be given is that in the event a registered dealer seeks for reduction of the tax payable by taking umbrage under sub-section (3) of Section 3 such claim shall be decided in the manner prescribed under the statute. The manner and method is spelt out in Section 19. The proviso to sub-section (1) of Section 19, imposes a condition on the registered dealer who claims input tax to establish that the tax due on purchases has been paid by him in the manner prescribed.

31. Sub-section (3) of Section 3 provides for reduction of tax payable by a registered dealer in the manner prescribed to the extent of tax paid on his purchase of goods specified in Part-B or Part-C of the First Schedule, inside the State, to the registered dealer, who sold the goods to him. This claim for Input Tax Credit is not available to a registered dealer in respect of all and any amount of tax paid or payable under the Act. That is, reduction of tax is provided for only in respect of the tax paid by a dealer on his purchase of goods made inside the State of Tamilnadu. There is no set off or reduction given in respect of the tax paid by the dealer on the purchase made by him outside the State of Tamilnadu. Evidently for the reason that tax on such purchase is paid to the other State and not to the State of Tamil Nadu.

32. Like wise as per Section 19(5)(c), no Input Tax Credit shall be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of Inter-State trade or commerce falling under Section 8(2) of Central Sales Tax Act. The reason being in respect of such sales effected outside the State of Tamilnadu, no tax being paid to the State of Tamil Nadu.

33. Similarly under sub-section (7) of Section 19, no input tax can be availed for goods purchased for business, but utilized for providing facility to proprietor, partner or Director, no ITC for purchase of all automobiles, no ITC for purchase of air conditioning units. Similarly, no input tax credit shall be allowed in respect of any goods purchased by a registered dealer for sale, but given away as free sample or gift or goods consumed for personal use. In terms of sub-section (9) of Section 19, no input tax credit is available in cases where goods are not sold because of theft or destruction or damage. In terms of sub-section (10) of Section 19, no registered dealer shall be entitled to claim ITC, unless he receives an original tax invoice. Sub-section (13) of Section 19 gives power to the assessing authority to deny ITC when it is found that fraud has been committed.

34. Thus from out of all taxable transactions stipulated under sub-section (2) of Section 3, certain transactions are carved out to give benefit of Input Tax Credit. Thus, having examined the manner and entitlement of ITC as per Section 19 of the Act, it can hardly be said that the right to claim ITC is a vested right or an indefeasible right, but it is a benefit conferred under the Act in certain contingencies and subject to conditions, to be extended in the manner prescribed. The Input Tax Credit given under sub-section (3) of Section 3 is really a benefit given in respect of certain taxable transactions for which tax paid under sub-section (2) of Section 3 to the extent of tax paid on purchase of goods inside the State. Therefore, it cannot be contended that sub-section (3) of Section 3 is an integral part of sub-section (2) of Section 3 conferring absolute and indefeasible right on the registered dealer. Input Tax Credit provided under sub-section (3) of Section 3 is really a benefit or indulgence. While so, it is open to the State Legislature to provide for conditions and restrictions while extending the concession. Primary obligation of the State is to tax. The concession by way of Input Tax Credit are to be construed very strictly.

35. To contend that Input Tax Credit is only a concession granted under the scheme of TN VAT Act, the learned Advocate General placed reliance upon (1992) 3 SCC 624 [Godrej & Boyce Mfg. Co. Pvt. Ltd. v. Commissioner of Sales Tax and others]. In the said decision, the Hon'ble Supreme Court dealt with Rule 41 of Bombay Sales Tax Rules which provides for setting off the purchase tax paid by the appellant on the raw

material purchased by him within the State of Bombay. No set-off is given in respect of the tax paid by the appellant on the purchases of the raw material made by him outside the State of Maharashtra evidently for the reason that such tax is paid to such other States. While considering the provisions for grant of setting off under Rule 41 of Bombay Sales Tax Rules and observing that such set-off is a concession or indulgence and that it is open to the Legislature while granting concession to restrict or curtail the extent of entitlement as condition for availing the concession, the Hon'ble Supreme Court held as under:- . ..... A manufacturing dealer like the appellant pays purchase tax when he purchases raw material and he is again obliged to pay the sales tax when he sells the goods manufactured by him out of the said raw material. Tax on both the transactions has the inevitable effect of increasing the price to the consumers besides adversely affecting the trade. It is for this reason that the aforesaid Rules enable the manufacturing dealer to claim set-off of the tax paid by him on the purchase of raw materials from out of the tax payable by him on the sale of goods manufactured from out of the said raw material. ....

9. ..... In law (apart from Rules 41 and 41-A) the appellant has no legal right to claim set-off of the purchase tax paid by him on his purchases within the State from out of the sales tax payable by him on the sale of the goods manufactured by him. It is only by virtue of the said Rules which, as stated above, are conceived mainly in the interest of public that he is entitled to such set-off. It is really a concession and an indulgence. More particularly, where the manufactured goods are not sold within the State of Maharashtra but are despatched to out-State branches and agents and sold there, no sales tax can be or is levied by the State of Maharashtra. The State of Maharashtra gets nothing in respect of such sales effected outside the State. In respect of such sales, the rule-making authority could well have denied the benefit of set-off. But it chose to be generous and has extended the said benefit to such out-State sales as well, subject, however to deduction of one per cent of the sale price of such goods sent out of the State and sold there. We fail to understand how a valid grievance can be made in respect of such deduction when the very extension of the benefit of set-off is itself a boon or a concession. It was open to the rule-making authority to provide for a small abridgement or curtailment while extending a concession. ..... (underlining added)

36. On this issue, useful reference may be made to the recent decision of the Division Bench of Bombay High Court in M/s.Mahalaxmi Cotton Ginning Pressing and Oil Industries vs. the State of Maharastra and Ors., [MANU/MH/0620/2012]. The challenge before the High Court of Bombay was to the constitutional validity of Section 48 (5) of the Maharastra Value Added Tax Act, 2002. Section 48 deals with set-off, refund, etc. Though the terminology used in Section 48 is slightly different from the terminology used in Section 19 of the TNVAT Act, in effect what is contemplated under Section 48 of the MVAT Act is in effect a credit or a refund of duty paid by a dealer subject to fulfillment of the conditions set out in Section 48. The Bombay High Court threadbare analyzed the set-off provision and held that the purpose of set-off is to obviate a cascading effect of the tax burden on the ultimate consumer and this element of legislative policy is to be balanced with the need for securing tax compliance and ensuring against a loss of legitimate revenue owing to Government. After analysing the erstwhile provisions contained in the Bombay Sales Tax Act and the Maharastra Value Added Tax Act, the Division Bench of the Bombay High Court held that a set-off constitutes a concession granted by the legislature and in the absence of set-off, the selling dealer would be liable to pay tax on the sale consideration and there is no independent right to a set-off apart from Section 48.

37. In Mohammed Haji Manachithodi Agencies vs. State of Kerala [2012 (3) KLT (SN) 17], the Division Bench of the Kerala High Court has held that the set-off is in the nature of a concession and no dealer has a right to claim input tax credit independent of the provision of Section 11 of the Kerala VAT Act.

38. Provision for availing concession is to be strictly construed and followed:-

Input tax credit , which is in the nature of concession or indulgence, could be availed only in the manner prescribed under Section 19. Law is well settled that the person, who claims exemption or concessional rate, must obey and fulfil the mandatory requirements exactly. Unless there is strict compliance with the provisions of the statute, the registered dealer is not entitled to claim Input tax credit'. Apart from Section 19 of TN

VAT Act, there is no independent right to claim Input tax credit . When Section 19(11) stipulates time frame for availment of Input tax credit , the registered dealer must strictly follow the mandatory requirements of the provision.

39. The availment of Input Tax Credit is creature of Statute. The concession of Input Tax Credit is granted by the State Government so that the beneficiaries of the concession are not required to pay the tax or duty which they are otherwise liable to pay under TN VAT Act. While so extending the concession, it is open to the Legislature to impose conditions. Section 19(11) is one such condition imposed making it mandatory for the registered dealer to claim Input Tax Credit before the end of the financial year or before ninety days from the date of purchase, whichever is later. The entitlement to claim Input Tax Credit is created by TN VAT Act and the terms on which Input Tax Credit can be claimed must be strictly observed.

40. The expression "in the manner prescribed" has been used in several places in Section 19 i.e. Section 19(2)(vi), 19(3)(b), 19(4), 19(10)(a) and 19(10)(b), 19(8) and in Section 3(3). That apart in several places in TN VAT Act, the expression "in the manner prescribed"/"in the manner as may be prescribed" has been used in Sections 2(36) & (38), 3(3), 5(1), 6A(2), 8(2), 14(1), 14(2), 18(2), 20, 21, 22(2), 22(4), 22(6)(a), 31, 32, 33(1), 33(3), 39, 39(8), 48A(1), 50, 51(4), 52(4), 54(4), 58(6), 59(5), 59(6)(b), 60(7)(b), 62(3), 64, 66, 67(3)(5), 67(10), 68, 69(b), 71(3)(d), 87A, 88(6)(a). The usage of the expression in the manner prescribed occurring in Section 3(3) shall be referable only to the manner prescribed in Section 19. The expression "in the manner prescribed" occurring in Section 19 and Section 3(3) makes it clear that Input Tax Credit could be availed in the manner prescribed. The modalities and the time frame in Section 19(11) as regards availment or enjoyment of Input Tax Credit is a pre-condition and not merely procedural. As far as Section 19(11) of TN VAT Act is concerned, the Legislature clearly intended to prescribe a time frame for availment of Input Tax Credit and the contravention of Section 19(11) means forfeiture of Input Tax Credit. Section 19(11) is a pre-condition for availing Input Tax Credit.

41. It is a settled position in law that a person claiming benefit of exemption must show that he satisfies the eligibility criteria and for that purpose the provision must be strictly construed. If exemption is available on complying with certain conditions, the conditions have to be mandatorily complied with. In (2011) 1 SCC 236 [Commissioner of Central Excise v. Hari Chand Gopal], the Hon'ble Supreme Court held as under:- 9. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. The same principle was reiterated in (2009) 12 SCC 735 [Commissioner of Customs (Preventive), Amristar v. Malwa Industries Ltd.].

42. In (2005) 2 SCC 129 [India Agencies (Regd.), Bangalore v. Additional Commissioner of Commercial Taxes, Bangalore], the Hon'ble Supreme Court emphasised that in case of Inter-State sales, the provision for furnishing original Form-C to claim concessional rate of tax under Section 8(1) of Central Sales Tax Act, 1956 is mandatory and that dealer has to strictly follow the procedure . Referring to the decisions in (1965) 3 SCR 626 : AIR 1966 SC 12 [Kedarnath Jute Mfg. v. C.T.O.] and (1997) 10 SCC 486 [Delhi Automobiles (P) Ltd. v. C.S.T.], it was held that to claim concessional rate of tax, provisions have to be strictly construed and that unless there is strict compliance with the provisions of the Statute, the registered dealer is not entitled to the concessional rate of tax.

43. Section 19(11) TN VAT Act was enacted because Legislature consciously wanted to set up a time frame for availment of Input Tax Credit before the end of the financial year or ninety days from the date of purchase, whichever is later. Section 19(11) being part of Section 19, to avail Input Tax Credit, the conditions thereon

are to be strictly complied with.

44. Re.contention : Section 19(11) is only procedural and it cannot whittle down substantive right:-

Learned Senior Counsel for petitioners contended that Section 3 is the Charging Section and Section 3(3) provides for Input Tax Credit and Section 19 is the machinery for effectuating the Input Tax Credit and the substantive right under Section 3(3) for availing Input Tax Credit cannot be whittled down by Section 19(11). The learned Senior Counsel submitted that Section 19(11) is in the arena of claiming Input Tax Credit and is only a procedural aspect and such procedural aspect cannot be construed as the provision disabling the Authority from extending Input Tax Credit. The learned Senior Counsel further submitted that but for Section 19(11), there is no impediment for the Assessing Officer from giving Input Tax Credit. Section 19(11) being procedural cannot be a stumbling block for claiming the substantive right.

45. Contending that Section 19(11) cannot curtail the right of assessee in claiming Input Tax Credit, the learned Senior Counsel placed reliance upon 2001 (134) E.L.T. 647 (Mad.) [Commissioner of Central Excise, Madras v. Home Ashok Leyland Limited]. Rule 57A of Central Excise Rules deals with right of manufacturer, with regard to the extent of his right to claim credit of the duty paid on inputs. Rule 57E recognises right of manufacturer to obtain additional Modvat credit in respect of the inputs on which further duty had been paid for any reason subsequent to the date of the receipt of the inputs by the manufacturer. Rule 57G sets out the procedure to be observed by the manufacturer while taking credit of the duty paid on the inputs under Rule 57A. In the above said decision, the Division Bench of this Court held that Rule 57E and 57G being clarificatory and procedural and proviso to Rule 57G cannot be construed as to limit the right of manufacturer to take credit for the duty paid on the inputs. The above decision of the Division Bench of this Court was confirmed by the Hon'ble Supreme Court reported in 2007 (210) E.L.T. 178 (SC) [Commissioner of Central Excise, Madras v. Home Ashok Leyland Limited]. Reliance is placed upon the above said decision (2007 (210) E.L.T. 178 (SC)) to contend that Section 19(11) being procedural, cannot be construed to limit the right of registered dealer to take Input Tax Credit for which the dealer has substantive right under sub-section (3) of Section 3 of TN VAT Act.

46. Section 19(11) being part of Section 19 which is the mechanism for working out Input Tax Credit, cannot be said to be merely procedural. As pointed out earlier, as per Rule 7 of Tamil Nadu Value Added Tax Rules, return for each month in Form-I to be filed on or before 20th of the succeeding month to the Assessing Authority. In Form-I, the dealer is to furnish the correct and complete details of (i) Input Tax Credit; (ii) Tax payable; (iii) Capital goods; (iv) Ouput items and other relevant details indicated in Form-I. If there is any omission or error therein, other than as a result of inspection or audit or receipt of any other information or evidence by the Assessing Authority, Rule 7(9) enables the registered dealer to file a revised return rectifying the omission or error within the period of six months from the last day of the relevant period to which the return relates. Only in case of any of failure or omission to claim Input Tax Credit, in Section 19(11), a time frame has been fixed to claim Input Tax Credit before the end of the financial year or ninety days from the date of purchase, whichever is later.

47. Re.contention : Section 19(11) is a machinery provision to be construed liberally:-

Onbehalf of petitioners, it was contended that Section 19 is a machinery provision and it has to be construed more liberally and must be reasonably applied. To support such contention, reliance was placed on the decision of the Hon'ble Supreme Court in Murarilal Mahavir Prasad vs. B. R. Vad ([1976] 37 STC 77).

48. We are unable to accept the said contention, since the scheme of Section 19 is not in the nature of a machinery provision, rather it is a substantive provision stipulating the contingencies and the types of transaction done by a registered dealer which would qualify for availing input tax credit.

49. The machinery provision under the Act for assessment and reassessment are Section 22 to 29 read with Rule 8, whereas Section 19 is a substantive provision under which upon a registered dealer making a claim for input tax credit after establishing that tax due on purchases has been paid by him in the manner prescribed, such claim for tax credit should fall within the scope of the various categories to qualify for the tax credit. A machinery provision provides the manner in which the assessment or reassessment has to be made. Section 19 on the contrary qualifies the entitlement of ITC and does not deal with the machinery of assessment. By way of illustration, If a registered dealer has purchased goods and sold in the course of inter-state trade or commerce falling under Section 8(2) of the CST Act, 1956, he shall not be entitled to input tax credit. Therefore, such provision cannot be termed as a machinery provision, rather it clearly demarcates which are the transactions, which done by a registered dealer would entitled to a tax credit. Sub-section (11) contained in Section 19 is in the nature of a reprieve to a defaulting dealer who has failed to claim input tax credit in respect of any transaction of taxable purchase in any month. If a dealer avails such benefit and makes a claim for input tax credit within the end of the financial year or before 90 days from the date of purchase whichever is later then such claim has to fall within one of the categories mentioned in Section 19 to qualify for credit. Therefore, even in such cases of belated claim within the time permitted under sub-section (11) of Section 19 the claim is not automatic and should satisfy the other stipulation as contained in Section 19. This is one more reason for us to hold that Section 19 is a substantive provision and not a machinery provision. 50. Re.contention : Section 19(11) is not consistent with the other provisions of the Act:- Ms.Hemalatha, learned counsel for petitioners contended that when the Assessing Officer passes an order under Section 22(6)(a) or under Section 25(1) or under Section 27, Section 19(11) would operate as an embargo to the registered dealer in claiming Input Tax Credit which would prejudicial to the registered dealer. Learned counsel further submitted that in respect of Inter-State sale, the assessee is entitled to 3% levy (now reduced to 2%) on production of C Form. Learned counsel further submitted that at the time of assessment if no C Form is produced, high rate of tax has to be paid and Input Tax Credit claim will be rejected and if C Form is received later, because of the embargo under Section 19(11), the assessee cannot claim Input Tax Credit and such Input Tax Credit will be rejected. Learned counsel submitted that Section 19(11) operates as an embargo in claiming Input Tax Credit and Section 19(11) is incompatible with the scheme of the Act. 51. Mr.S.P.Asokan, learned counsel for petitioners submitted that Rule 7(9) permits rectification of errors in the returns and filing of revised returns within the period of six months from the last date of relevant period to which the return relates and Section 19(11) provides other limitation for claiming Input Tax Credit. While so, there cannot be two different limitation periods for claiming Input Tax Credit.

52. There is no force in the contention that Section 19(11) would operate as an embargo to the registered dealer in claiming Input Tax Credit causing prejudice to the registered dealer. The condition stipulated in Section 19(11) effectuates the scheme of the Act and more in the nature of beneficial to the registered dealer. Rule 7 of Tamil Nadu Value Added Tax Rules, 2007 contemplates that .... every registered dealer liable to pay tax under the Act shall file return for each month in Form-I on or before 20th of the succeeding month to the Assessing Authority . In terms of sub-rule (1)(b) of Rule 7 every registered dealer who is liable to pay tax under Section 3(5) shall file return in Form J on or before 20th of succeeding month and such return shall be accompanied by proof of payment of tax. In Form-I Value Added Tax Monthly Return, the registered dealer is to furnish (i) Correct and complete details of Input Tax Credit; (ii) Tax payable; (iii) Capital goods and (iv) Output items. Along with Form-I, the registered dealer is also to enclose four Annexures giving correct and complete details indicated thereon. In Form-I, the registered dealer has to give a declaration that the information furnished in Form-I is true, correct and complete . As per Rule 7(9), if a dealer having filed return finds any omission or error therein, other than as a result of inspection or audit or receipt of any other information or evidence by the Assessing Authority, he shall file a revised return rectifying the omission or error within the period of six months from the last date of relevant period to which the return relates.

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.

55. Every dealer under the Act shall file return in the prescribed form within the prescribed period in the prescribed manner along with proof of payment of tax. Section 22 deals with procedure to be followed by the Assessing Authority while making the assessment. In terms of Section 22(4), when the return filed is incomplete or incorrect, after making enquiry, the Assessing Authority shall assess the dealer to the best of its judgment. When non-filing of return within the stipulated period was beyond the control of the dealer, Section 22(6)(a) enables the Authority to make a fresh assessment on the basis of the return submitted. If any dealer is liable to pay tax under the Act fails to submit return within the prescribed period, as per Section 25(1), the Assessing Authority may provisionally determine the tax payable by the dealer to the best of its judgment. Section 27 deals with assessment of escaped turnover and wrong availment of Input Tax Credit. Section 29 deals with 'assessment in cases of price variation'. Section 62 deals with amendment of order of assessment, where as a result of an order passed in appeal, revision or review, any change becomes necessary the Assessing Authority shall be authorized to amend the order of assessment and on such amendment any amount over paid by the registered dealer shall be refunded.

56. It is the contention of petitioners that Section 19(11) is not consistent with the provisions under Sections 22, 24, 27, 28 and 29 of TN VAT Act. It is submitted that when any re-assessment is made under any of those provisions and revised return is filed, Section 19(11) would operate as an embargo for claiming Input Tax Credit and Section 19(11) would be a stumbling block for claiming Input Tax Credit.

57. An analysis of various provisions of TN VAT Act and Rules thereon, we are of the view that when assessment or revision of assessment is made under Sections 22, 24, 27, 28 or 29 of the Act, Section 19(11) does not operate as an embargo for claiming Input Tax Credit.

58. Rule 8 of the VAT Rules deals with 'procedure for assessment'. Rule 8(6) states that after assessment or revision of assessment under Sections 22, 24, 27, 28 or 29 of the Act, the assessing authority shall serve on the dealer a demand notice in Form O , after adjusting the eligible input tax credit. Rule 10 gives the formula to be adopted for calculating the Input Tax Credit. If the tax due on assessment or revision of assessment, after adjustment of eligible Input Tax Credit, is lower than the tax already paid, the assessing authority shall serve upon the dealer a notice in Form P, informing the dealer of the adjustment of excess tax towards the arrears or the refund of the amount, as the case may be. In terms of Rule 8(6), after assessment or revision of assessment under Section 22, 24, 27, 28 or 29 of the Act, the Assessing Authority is to follow the procedure laid down in Rule 8(6) by serving appropriate notice. Therefore, the contention raised by the petitioners that in the event of the assessment or re-assessment under Section 22, 24, 27,28 or 29, Section 19(11) acts as an embargo is liable to be rejected. Section 19(11) is neither inconsistent nor opposed to the other provisions of the Act nor derogatory to the scheme of the VAT Act.

59. On behalf of the petitioners, it was submitted that when re-assessment is made either under Sections 22, 24, 27, 28 or 29 of the Act, there may arise genuine hardships in claiming Input tax credit and in such cases Section 19(11) would be a stumbling block in claiming Input tax credit. For the sake of argument, assuming that there may be any genuine hardships for the dealers, it is for the Legislature to intervene and make suitable

amendment and not for this Court to do so.

60. In India Agencies case [(2005) 2 SCC 129] the Hon'ble Supreme Court held as follows:-

6. We are of the opinion that a liberal construction was not justified having regard to the scheme of the Act and the Rules in this regard and if there was any hardship, it was for the legislature to take appropriate action to make suitable provisions in that regard. It is also settled rule of interpretation that where the statute is penal in character, it must be strictly construed and followed.

27. We also realise that the section and the rules as they stand may conceivably cause hardship to an honest dealer. He may have lost the declaration forms by pure accident and yet he will be penalised for something for which he is not responsible but it is for the legislature or for the rule-making authority to intervene to soften the rigour of the provisions and it is not for this Court to do so where the provisions are clear, categoric and unambiguous. It is for the Legislature to take action to make suitable amendment. It is not for this Court to do so when the provisions are clear and unambiguous.

61. Constitutional Validity of fiscal legislation:-

When there is a challenge to the constitutional validity of the provisions of a Statute, Court exercising power of judicial review must be conscious of the limitation of judicial intervention, particularly, in

matters relating to the legitimacy of the economic or fiscal legislation. While enacting fiscal legislation, the Legislature is entitled to a great deal of latitude. The Court would interfere only where a clear infraction of a constitutional provision is established. The burden is on the person, who attacks the constitutional validity of a statute, to establish clear transgression of constitutional principle.

62. When vires of a Statute is challenged, Courts must make every effort to uphold the constitutional validity of a statute. In Government of Andhra Pradesh v. P.Lakshmi Devi, (2008) 4 SCC 720, the Hon'ble Supreme Court has observed as under: "The Court must, therefore, make every effort to uphold the constitutional validity of a statute, even if that requires giving the statutory provision a strained meaning, or narrower or wider meaning, than what appears on the face of it. It is only when all efforts to do so fail should the court declare a statute to be unconstitutional."

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.

64. The Hon'ble Constitution Bench of the Supreme Court in R.K.Garg vs. Union of India [(1981) 4 SCC 675], held that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. Laws relating to economic activities should be viewed with greater attitude than laws touching civil rights such as freedom of speech, religion etc. The legislature should be allowed some play in the joints and there is no straitjacket formula particularly in case of legislation dealing with economic matters and having regard to the nature of the problem required to be dealt with, greater play in the joins has to be allowed to the legislature. The Court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas, where fundamental human rights are involved. That the Court should remember legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, there may be crudities and in equities in complicated experimental, economic legislation, but on that account

alone it cannot be struck down as invalid. The same principle that in the matter of taxation, the Court permits great latitude to the legislature was reiterated in (1997) 5 SCC 536 [Mafatlal Industries Limited v. Union of India].

65. Question No.3:-

Whether Section 19(11) is mandatory or directory:-

Learned Senior Counsel for petitioners submitted that undue premium has been put up on Section 19(11) and contended that Section 19(11) cannot be mandatory and it could only be directory. Contending that use of the word shall in a Statute does not necessarily be taken as mandatory, learned Senior Counsel placed reliance upon AIR 1965 SC 1688 [The Cochin State Power and Light Corporation Ltd. v. The State of Kerala]; AIR 1983 SC 303 [Dalchand v. Municipal Corporation, Bhopal and another] and AIR 2005 SC 2441 [Kailash v. Nanhku and others].

66. Placing reliance upon (2002) 6 SCC 33 [Topline Shoes Ltd. v. Corporation Bank], the learned Senior Counsel contended that the time stipulated in Section 19(11) could only be directory. Reiterating the submissions of learned Senior Counsel, Ms.Hemalatha and Mr.S.P.Asokan, learned counsel for petitioners placed reliance upon AIR 1962 SC 113 [Bhikraj Jaipuria v. Union of India] and (2005) 139 STC 74 [State of Jharkhand and others v. Ambay Cements and another].

67. Referring to the principles as to Statutory Construction and observing that the word shall in Statute though generally taken in mandatory sense does not necessarily mean that in every case it shall have that effect, in AIR 1957 SC 912 [Manbodhan Lal Srivasgava v. State of U.P.], the Hon'ble Supreme Court held as under:- 1. .... Hence, the use of the word shall: in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word may has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid. In that connection, the following quotation from Crawford on Statutory Construction - Art. 261 at p.516 is pertinent: The question as to whether a Statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is closed and the meaning and intention of the Legislature must govern, and theses are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design and the consequence which would follow from construing it the one way or the other. .....

68. We may usefully refer to the following passage in Craies on Statute Law , 5th Edition, p.242 which reads as under :-

No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed.

69. After extracting the quote from Maxwell on The Interpretation of Statutes , 10th Edition at page 381 and observing that it is for the Court to ascertain the real intention of the Legislature by carefully examining the scope of Statute, in AIR 1961 SC 751 [State of U.P. and others v. Babu Ram Upadhya], the Hon'ble Supreme Court held as under:- 9. The relevant rules of interpretation may be briefly stated thus: When a statute uses the word shall , prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that

the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.

70. In AIR 2005 SC 2441 [Kailash Nanhku and others], the Hon'ble Supreme Court explained that notwithstanding the amendment of Order VIII, Rule 1 and the proviso thereto by the amendment Act 22 of 2006, those provisions were not mandatory but directory and they did not take away or curtail the power of the Court to take a written statement on record though filed beyond the 90 days period.

71. Filing of written statement under Order VIII, Rule 1 is a provision contained in the Code of Civil Procedure and belongs to domain of procedural law. Since it is a part of procedural law, although Order VIII, Rule 1 C.P.C. stipulates a time within which the written statement has to be presented, the Hon'ble Supreme Court held that the word shall used were not mandatory but directory. The nature, object and purpose of Section 19(11) of TN VAT Act which is a pre-condition for claiming Input Tax Credit is completely different from the provision of Order VIII, Rule 1 C.P.C. and therefore, the above decision is of no assistance to the petitioners in the present cases. Like wise, in all other decisions, the Hon'ble Supreme Court has taken a view that it is directory only in the light of those enactments which were under consideration.

72. Applying the principles of interpretation, the test to ascertain whether the word shall used in Section 19(11) has to be examined upon the TNVAT Act and we should not go by the phraseology of the provision, but should consider the nature, its design and consequence which would follow from it. Section 19(11) specifically uses the word "shall" as regards compliance with the time-frame for claiming Input Tax Credit accumulated on purchases either before or end of the financial year or before ninety days after the purchase whichever is later. In our considered view in order to verify the entries and to prevent any tax avoidance or evasion, time frame is stipulated in Section 19(11) of TN VAT Act to claim Input Tax Credit. The use of the word "shall" is ordinarily indicative of the mandatory nature of the provision.

73. Learned counsel for petitioners then contended that as per Section 18(3) of the Act, where a dealer has not adjusted the Input Tax Credit or has not made his claim for refund within the period of 180 days, such credit shall lapse to Government . Learned counsel for petitioners contended that no such language of "lapse to Government" employed in Section 19(11) would clearly show that Section 19(11) is not mandatory and only directory.

74. The intention of Legislature is to restrict concession of Input Tax Credit on purchases within the particular time frame. If Input Tax Credit on purchases against output taxes are not claimed before the end of the financial year or ninety days from the date of purchase whichever is later, the registered dealer is not entitled to claim Input Tax Credit. The intention of the Legislature is to restrict the benefit of "Input Tax Credit" within a particular time-frame. Consequence of non-compliance is very much available in Section 19(11) dealing with non-entitlement of "Input Tax Credit". Therefore, it cannot be contended that Section 19(11) has not prescribed any consequence for non-compliance of time frame as per Section 19(11).

75. As pointed out earlier, Section 19(11) of TN VAT Act employs shall and prescribes time limit for availment of Input Tax Credit on purchases before the end of the financial year relating to such purchases or ninety days from the date of purchase whichever is later. That the Legislature used the expression "shall" is indicative of the mandatory nature of Section 19(11).

76. If the language of the enactment is clear and unambiguous, it would not be legitimate for the Courts to add any words thereto and evolve therefrom some sense which may be said to carry out the supposed intentions of the Legislature. The intention of the Legislature is to be gathered only from the words used by it and no such liberties can be taken by the Courts for effectuating a supposed intention of the Legislature. [Vide AIR 1959 SC 459 (Sri Ram Ram Narain Medhi v. State of Bombay]. Any interpretation that Section 19(11) is not

mandatory but directory would not be an interpretation in consonance of the scheme of the Act.

77. In (1987) 1 SCC 424 [Reserve Bank of India v. Pearless General Finance and Investment Company Limited], the Hon'ble Supreme Court held that a Statute is best interpreted when we know why it was enacted. The reason being Section 19(11) was enacted because the Legislature consciously wanted to set up a time frame for availment of Input Tax Credit accrued on purchases before the end of the financial year or ninety days from the date of purchase whichever is later.

78. On behalf of the petitioners, it was submitted that the impugned provision does not take into account the commercial realities as in the cases of Modvat or Cenvat Credit Rules with the in-built flexibility and therefore, Section 19(11) is to be held as directory and not mandatory. As discussed earlier, the Legislature consciously prescribed a time frame for availment of Input tax credit accrued before the end of the financial year or 90 days from the date of purchase, whichever is later. Section 19 is a pre-condition for availment of input tax credit . When Section 19(11) is a pre-condition for availing Input Tax Credit, it is to be strictly complied with and the petitioners cannot contend that there ought to have been flexibility in the time frame for availing Input tax credit .

79. Learned Advocate General submitted that the time frame for availment of Input Tax Credit is reasonable and the same has been enacted with a view to verify the details furnished by the registered dealers before the end of the financial year and Section 19(11) is equal and similar to all tax payers and there is no discrimination.

80. Scheme of TN VAT Act is based on self assessment. As pointed out earlier, as per Rule 7, every registered dealer is liable to pay tax under the Act, shall file return for each month in Form-I on or before 20th of the succeeding month. It is mandatory on the part of certain categories of dealers to file returns in electronic Form. As pointed out earlier, in Form-I, the registered dealer has to furnish true, correct and complete particulars regarding (i) Input Tax Credit; (ii) Tax payable; (iii) Capital goods; (iv) Output items. Form-I interalia contain the following details viz., (i) Amount of Input Tax Credit excess available; (ii) details regarding Less; (iii) Input Tax Credit, if any, carried forward to next month. Along with Form-I, the registered dealer have to submit four Annexures with the details indicated thereon.

81. Sub-section (17) of Section 19 contemplates that excess may be adjusted against any outstanding tax due from the dealer. Sub-section (18) of Section 19 stipulates that excess Input Tax Credit if any, after adjustment under sub-section (17), shall be carried forward to the next year or refunded, in the manner as may be prescribed. When the scheme of the Act provides for adjustment of excess Input Tax Credit and carried forward to the next year or refunded, necessarily the details furnished by the registered dealer have to be verified. Matching process has to be carried out by verifying various entries. When the scheme of the Act stipulates the excess Input Tax Credit of a year being adjusted for the outstanding tax liability or excess Input Tax Credit being carried forward or refunded for each financial year, necessarily the Assessing Authority has to complete the accounts. It is in consonance with the scheme of the Act.

82. The Legislature consciously enacted Section 19(11) of TN VAT Act with avowed object of incorporating the time frame for availing Input Tax Credit before the end of financial year or ninety days from the date of purchase whichever is later. The provision is for safeguarding the interest of the revenue and to prevent the cascading effect of tax burden on the ultimate consumer. Therefore, we are of the view that Section 19(11) is mandatory and its contravention will result in forfeiture of the concession of availments of Input Tax Credit.

83. Value Added Tax structure has the ultimate goal of augmenting the revenue by making the procedure simple and more transparent. Legislature in its wisdom mandated time frame for availment of Input Tax Credit accrued on purchases before the end of the financial year or ninety days from the date of purchase whichever is later. Section 19(11), being mandatory, the time-frame stipulated for Input Tax Credit is to be strictly construed. Section 19(11) of TN VAT Act cannot be struck down as being either unreasonable or

discriminatory. We do not find any merit in the challenge to the provision of Section 19(11) of TN VAT Act.

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.

85. In cases where final orders of assessment have been challenged, the assessees shall be entitled to prefer statutory appeal against such order and if such appeals are presented, within a period of 60 days from the date of receipt of a copy of this order, the same shall be entertained by the appellate authority subject to the assessee full-filing other mandatory statutory conditions except rejecting those appeals on the ground of limitation. In cases where the petitioners have challenged show cause notices, they are at liberty to submit their explanation. If such explanation is submitted within a period of 30 days from the date of receipt of a copy of this order, the assessing authority shall consider the case in accordance with law.

86. In the result, all the writ petitions are dismissed holding that Section 19(11) is a valid piece of legislation, cannot be struck down as being either unreasonable or discriminatory and violative of Article 265 and 360A of the Constitution of India. The interim stay granted in all writ petitions stand vacated and the miscellaneous petitions are closed. There is no order as to costs. (R.B.I.,J.) (T.S.S.,J.)

17.07.2013

Index: Yes

Internet: Yes

bbr/usk

Note to Office:

Office is directed to return all the

original assessment orders to enable

the petitioners to avail the statutory

remedy.

B/o

usk

17.7.2013

R.BANUMATHI,J

and

T.S.SIVAGNANAM,J

Common Order in

W.P.No.902 of 2009 etc. batch