IN THE HIGH COURT OF JUDICATURE AT MADRAS

| | |
|---|---|
| Reserved On | 01.12.2022 |
| Pronounced On | 18.04.2023 |

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN**
**and**
**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**T.C.Nos.19, 20 & 21 of 2022 and W.A.No. 2607 & 2618 of 2021 & 451 of 2022 & 2714 of 2021 & 2637 to 2640 of 2021 & 119, 125, 131 & 135 of 2022 & 1194, 1195, 1197 & 1201 of 2022 & W.P.No.9372 of 2019 &11482 to 11484, 11488 & 11489 of 2019 & 12450 of 2019 & 15046, 15049, 15050, 15052, 15053 & 15055 of 2019 & 1226, 1230 & 1239 of 2021 & 18761, 18766 & 18769 of 2021 & 11808, 11811, 11812, 11814, 11816 & 11819 of 2022 and C.M.P.Nos.6416, 6415, 6417, 3268, 906, 931, 963, 989, 7556, 7585, 7561, 7569 of 2022, 17062, 17113, 17622, 17199, 17201, 17203, 17204 of 2021 and W.M.P.Nos.9944, 11749, 11750, 11752, 11753, 11755, 12728, 12729, 15021, 15025, 15026, 15028, 15029, 15030 of 2019, 1380, 1382, 1391, 20054, 21428, 21432, 20059, 23860, 20062 of 2021, 11249, 11250, 11251, 11253, 11254 and 11256 of 2022.**

**T.C.No.19 of 2022**

Tvl.Sahyadri Industries Ltd.,
Plot No.KK2 (N) & KK2 (S),
Sipcot Industrial Growth Centre,
Kovai Main Road,
Perundurai – 638 052,
Erode.
Represented by its Authorized Representative,
Mr.Vinod Kumar Dixit ... Petitioner / Respondent

vs.

The State of Tamil Nadu,
Represented by,
The Joint Commissioner (CT),
Salem Division,
(Now Erode Division),
Erode ... Respondent / Appellant

**Prayer**: This petition has been filed under Section 60(1) of the Tamil Nadu Value Added Tax Act, 2006 against the order of the Hon'ble Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) Coimbatore – 18 dated 16.11.2021 passed in Coimbatore Tribunal State Appeal No.93 of 2016.

**T.C.No.20 of 2022**

Tvl.Sahyadri Industries Ltd.,
Plot No.KK2 (N) & KK2 (S),
Sipcot Industrial Growth Centre,
Kovai Main Road,
Perundurai – 638 052,
Erode.
Represented by its Authorized Representative,
Mr.Vinod Kumar Dixit ... Petitioner / Respondent

vs.

The State of Tamil Nadu,
Represented by,
The Joint Commissioner (CT),
Salem Division,
(Now Erode Division),
Erode ... Respondent / Appellant

**Prayer**: This petition has been filed under Section 60(1) of the Tamil Nadu Value Added Tax Act, 2006 against the order of the Hon'ble Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) Coimbatore – 18 dated 16.11.2021 passed in Coimbatore Tribunal State Appeal No.91 of 2016.

**T.C.No.21 of 2022**

Tvl.Sahyadri Industries Ltd.,
Plot No.KK2 (N) & KK2 (S),
Sipcot Industrial Growth Centre,
Kovai Main Road,
Perundurai – 638 052,
Erode.
Represented by its Authorized Representative,
Mr.Vinod Kumar Dixit ... Petitioner / Respondent

vs.

The State of Tamil Nadu,
Represented by,
The Joint Commissioner (CT),
Salem Division,
(Now Erode Division),
Erode ... Respondent / Appellant

**Prayer**: This petition has been filed under Section 60(1) of the Tamil Nadu Value Added Tax Act, 2006 against the order of the Hon'ble Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) Coimbatore – 18 dated 16.11.2021 passed in Coimbatore Tribunal State Appeal No.92 of

2016.

For Appellant in

T.C.Nos.19, 20& 21 of 2022 : Mr.Mahesh Raichandani
for M/s.A.Saranya

For Respondents in
all cases : Mr.Haja Nazirudeen,
Additional Advocate Genearl
for M/s.M.Venkateswaran
SGP (Taxes) assisted by
Mr.C.Harsharaj,
Additional Government Pleader,
Ms.Amirtha Poonkodi Dinakaran,
Government Advocate.

**COMMON ORDER**

**S.VAIDYANATHAN, J.**
**AND**
**C.SARAVANAN, J.**

By this common order all these Writ Petitions, Writ Appeals and Tax Cases, are being disposed.

2. In these cases following issue arises for our consideration:-

(a) Whether input tax credit availed under Section 19 of the Tamil Nadu Value Added Tax Act, 2006(herein after referred to as TN VAT Act, 2006) by these petitioners/ appellants can be denied retrospectively on account of cancellation of the VAT registration of the dealers who are said to have effected sale of

the goods to these petitioners/appellants?

(b) Whether, the input tax credit availed by them can be denied in absence of transport documents and other documents to prove movement of goods to these petitioners/appellants from the dealers who effected sale of goods to these petitioners/appellants?

(c) Whether amendment to Section 19(1) of TN VAT Act, 2006 vide Tamil Nadu Act, 13 of 2015 with effect from 29.01.2016 is prospective or retrospective?

3. For the sake of convenience, we shall deal with the cases in three parts. The petitioners have challenged the Assessment Orders in Writ Petitions. Writ Appeals pertain to challenge to the Orders passed by a learned Single Judge of this Court. By the impugned order the learned Single Judge of this Court dismissed the Writ Petitions filed by them. In the Writ Petitions,before the Single Judge of this Court, the appellants had challenged the Assessment Orders passed by the Assessing Officers.

4. Tax Cases arise out of a common order passed by the Tamil Nadu Sales Tax Appellate Tribunal (STAT), Additional Branch, Coimbatore – 18 in Coimbatore Tribunal Sales Tax Appeal Nos.91 to 93 of 2016.

5. The petitioners in the Writ Appeals (WA) and in the Writ Petitions (WP) have an alternate remedy against the impugned assessment order under the provisions of the aforesaid Act before the Appellate Assistant Commissioner. Ordinarily, we would have straight away dismissed the Writ Petitions and the Writ Appeals filed with liberty to file statutory appeals before the aforesaid appellate authority and confined this order on merits in the Tax Cases alone.

6. However, since this Court has earlier admitted these Writ Appeals/Writ Petitions long back, we shall endeavour to give a finality to the issues by giving our decision on the legal position for the assessing officers/appellate authorities as the case may be to adjudicate and decide the appeals.

7. In support of their cases, reliance was placed on the following case laws by the counsel for the respective petitioners/appellants:-

i. **Prince Khadi Woollen Handloom Prod. Coop. Indl. Society** vs. Commissioner of Central Excise, 1996 (88) ELT 637 (SC);

ii. **Reckitt & Colman of India Limited** vs. **Collector of Central Excise**, 1996 (88) E.L.T. 641 (S.C.);

iii. **Saci Allied Products Limtied** vs. **Commissioner of Central Excise**, 2005 (183) ELT 225 (SC);

iv. **Commissioner of Central Excise** vs. **Ballarpur Industries Limtied**, 2007 (215) E.L.T. 489 (S.C.);

v. **Commissioner of Customs, Mumbai** vs. **Toyo Engineering India Limtited**, MANU/SC/3625/2006;

vi. **Bachhaj Nahar** vs. **Nilima Mandal and another**, (2008) 17 SCC 491;

vii. **Warner Hindustan Limited** vs. **Collector of Central Excise, Hyderabad**, 1999 (113) ELT 24 (SC);

viii. **D.Y.Beathel Enterprises** vs**. State Tax Office**, 2021-TIOL-890-HC-MAD-GST;

ix. **Union of India and others** vs. **Dhanwanti Devi and Others**, (1996) 6 SCC 44;

x. **Shree Bhairav Metal Corporation** vs**. State of Gujarat**, MANU/GJ/0396/2015;

xi. **Althaf Shoes Private Limited** vs. Assistant Commissioner (CT), MANU/TN/5302/2011;

xii. **Infiniti Wholesale Limited** vs. **The Assistant Commissioner (CT),** W.P.No.9265 of 2013;

xiii. **Eicher Motors Limited and Ors** vs. **Union of India**, 1999 (106) ELT 3 (S.C.);

xiv. **Collector of Central Excise, Pune and others** vs. **Dai Ichikarkaria Limited and Others**, 1999(112)ELT353(S.C.);

xv. **Additional Commissioner of Income Tax** vs. **BahriBros.Private Limited**, 154 ITR 244 (1985), MANU/BH/0136/1984;

xvi. **Commissioner of Central Excise Chandigarh** vs. **Neepaz Steels (India),** (2007) 213 ELT 100;

xvii. **Commissioner of Central Excise, Chandigarh** vs. **Neepaz Steels (India)**, (2008) 230 ELT 218;

xviii. **GheruLal Bal Chand** vs. **State of Haryana and Others**, (2012) ILR 2Punjab and Haryana781;

xix. **Mahalaxmi Cotton Ginning Pressing and Oil Industries, Kolhapurv** vs. **The State of Maharashtra and Ors**,MANU/MH/0620/2012;

xx. **Shanti Kiran India Private Limited** vs. **Commissioner Trade and Tax Department**, MANU/DE/0058/2013;

xxi. **On Quest Merchandising India Private Limited and Ors.,** vs. **Government of NCT of Delhi and Ors.,** MANU/DE/3276/2017;

xxii. **DuniChondRataria** vs. **Bhuwalka Brothers Ltd.,** MANU/SC/0038/1954;

xxiii. **KalwaDevadattam and Others** vs. **The Union of India and Others**, (1964) 3 SCR 191, AIR 1964 SC 880;

xxiv. **Addagada Raghavamma and another** vs. **AddagadaChenchamma and another**, (1964) 2 SCR 933, AIR 1964 SC 136;

xxv. **Debi Prasad (Dead) By L.R.S.** vs. **Smt.Tribeni Devi and Others**, 1970 (1) SCC 677;

xxvi.**Union of India** vs. M/**s.ChaturbhaiM.Patel& Co.,** (1976) 1 SCC 747;

xxvii. **State of Kerala** vs. **K.T.ShaduliYusuff**,

(1977) 39 STC 478 (SC);

xxviii. **State of U.P. and Others** vs. **M/s.Indian Hume Pipe Company Limited**, (1977) 2 SCC 724;

xxix. **Deputy Commissioner (CT), Coimbatore Division, Coimbatore-2** vs. **Sivakumar and Company**, 1979 SCC OnLine Mad 411;

xxx. **Lakshmi Steel Traders** vs. **Board of Revenue (Commercial Taxes),** (1991) 82 STC 406 (MAD);

xxxi. **Madras Granites Private Limited** vs. **Commercial Tax Officer, Arisipalayam Circle, Salem and Another,** (2006) 146 STC 642 (MAD);

xxxii. **Godrej Sara Lee Limited** vs. **Assistant Commissioner and another**, (2009) 14 SCC 338;

xxxiii. **State of Tamil Nadu** vs. **A.N.S.Guptha and Sons,** (2011) 38 VST 45 (MAD);

xxxiv. **Reliance Jute and Industries Limited** vs. **C.I.T.West Bengal, Calcutta**, (1980) 1 SCC 139;

xxxv. **M/s.Bharat Barrel and Drum Mfg.Co.Ltd and another** vs. **The Employees State Insurance Corporation**, 1971 (2) SCC 860;

xxxvi. **State of Maharastra** vs. **SureshTrading Company**, (1997) 11 SCC 378;

xxxvii. **Tarun Creation** vs. **Commercial Tax Officer, Bazaar Circle, Tirupur**, (2020) 82 GSTR 449 (Mad);

xxxviii. **Magadh Sugar and Energy Limited** vs. **State of Bihar and others,** 2021 SCC OnLine SC 801;

xxxix. **Poppatlal Shah** vs. **The State of Madras**, (1953) 4 STC 188 (SC);

xl. **The State of Kerala and Others**, vs. **Annam and Others,** 1968 SCC OnLine Ker 103;

xli. **Heinz India Private Limited and another** vs. **State of Uttar Pradesh and Others**, (2012) 5 SCC 443;

xlii. **Sudesh Kumar** vs. **State of Uttarakhand,** (2008) 3 SCC 111;

xliii. **Oryx Fisheries Private Limited** vs. **Union of India and Others,** (2010) 13 SCC 427;

xliv. **Duni Chand Rataria** vs. **Bhuwalka Brothers Ltd.,** (1955) 1 SCR 1071, AIR 1955 SC 182;

xlv. **BayyanaBhimayya and Sukhdevi Rathi** vs. **The Government of Andhra Pradesh,** (1961) 12 STC 147 (SC);

xlvi. **Uniworth Textiles Limited** vs. **Commissioner of Central Excise,** (2013) 9 SCC 753;

xlvii. **Calcutta Discount Company Limited** vs. **Income Tax Officer, Companies District-1, Calcutta and Another,** (1961) 2 SCR 241;

xlviii. **State Trading Corporation of India Limited and another** vs. **State of Mysore and another**, (1963) 3 SCR 792, AIR 1963 SC 548;

xlix. **Tata Engineering and Locomotive Company Limited** vs. **Assistant Commissioner of Commercial Taxes,** (1967) 2 SCR 751, AIR 1967 SC 1401;

l. **Hansraj Gordhandas** vs. **H.H.Dave, Assistant Collector of Central Excise and Customs, Surat and Others**, (1969) 2 SCR

253;

li. **Raza Textiles Limited** vs. **Income Tax Officer, Rampur,** (1973) 1 SCC 633;

lii. **Controller of Estate Duty, Madras** vs. **Smt.Parvathi Ammal,** (1975) 4 SCC 176;

liii. **K.Gopinath Nair and others** vs. **State of Kerala**, (1997) 10 SCC 1;

liv. **Commissioner of Central Excise, Chandigarh** vs. **Pepsi Foods Limited,** (2011) 1 SCC 601;

lv. **Whirlpool Corporation** vs. **Registrar of Trade Marks, Mumbai and Others,** (1998) 8 SCC 1;

lvi. **State Government Houseless Harijan Employees Association** vs. **State of Karnataka and Others**, (2001) 1 SCC 610;

lvii. **Collector of Central Excise, Bombay** vs. **Maharashtra Fur Fabrics Limited,** (2002) 7 SCC 444;

lviii. **Commissioner of Central Excise, Hyderabad** vs. **Sunder Steels Limited,** (2005) 3 SCC 363;

lix. **Sandur Micro Circuits Limited** vs. **Commissioner of Central Excise, Belgaum,** (2008) 14 SCC 336;

lx. **Meera Sahni** vs. **Lieutenant Governor of Delhi and Others,** (2008) 9 SCC 177;

lxi. **Commissioner of Central Excise, Bhubaneshwar-I** vs. **Champdany Industries Limited,**(2009) 9 SCC 466;

lxii. **J.Jayalalithaa and Others** vs. **State of Karnataka and Others,** (2014) 2 SCC 401;

lxiii. **Commissioner of Income Tax (Central)-I,**

**New Delhi** vs. **Vatika Township Private Limited,** (2015) 1 SCC 1;

lxiv. **Union of India and another** vs. **Indusind Bank Limited and another**, (2016) 9 SCC 720;

lxv. **Jayam and Company** vs. **Assistant Commissioner and another,** (2016) 15 SCC 125;

lxvi. **Parle Agro Private Limited** vs. **Commissioner of Commercial Taxes, Trivandrum,** (2017) 7 SCC 540;

lxvii. **Shanti Kiran India Private Limited** vs. **Commissioner Trade and Tax Department**, [2013] 57 VST 405 (Delhi);

lxviii. **Infiniti Wholesale Limited** vs. **Assistant Commissioner (CT), Koyambedu Assessment Circle, Koyambedu, Chennai**, [2015] 82 VST (Mad);

lxix. **Sri Lakshmi Textiles** vs. **Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another**, [2016] 93 VST 202 (Mad);

lxx. **Computer Consultants** vs. **Assistant Commissioner (CT), Hosur (South) Assessment Circle, Hosur and another**, [2017] 97 VST 391 (Mad);

lxxi. **Faiveley Transport Rail Technologies India Limited** vs. **Assistant Commissioner (CT), Hosur (South), Hosur**, [2017] 97 VST 395 (Mad);

lxxii. **Collector of Central Excise, Pune and Others** vs. **Dai Ichikarkaria Limited and others**, 1999 (112) ELT 353 (S.C.);

lxxiii. **Additional Commissioner of Income Tax**

vs. **Bahri Bros. Private Limited,** (2007) 213 ELT 100;

lxxiv. **GheruLal Bal Chand** vs. **State of Haryana and Others,** (2012) ILR 2 Punjab and Haryana 781;

lxxv. **Shanti Kiran India Private Limited** vs. **Commissioner Trade and Tax Department**, MANU/DE/0058/2013;

lxxvi. **Assistant Commissioner (CT), Broadway Assessment Circle, Chennai** vs. **Bhairav Trading Company**, [2015] 96 VST 315 (Mad);

lxxvii. **Assistant Commissioner (CT), Presently Thiruverkadu Assessment Circle, Kolathur, Chennai** vs. **Infiniti Wholesale Limited**, [2017] 99 VST 341 (Mad);

lxxviii. **Jayam and Company** vs. **Assistant Commissioner and another**, [2016] 96 VST 1 (SC);

lxxix. **Govardhan M.** vs. **State of Karnataka,** 2012 SCC OnLine Karnataka 9088;

lxxx. **M/s.K.Sashidhar** vs. **Indian Overseas Bank and Others**, 2019 (12) SCC 150;

lxxxi. **M/s.UMC Technologies** vs. **Food Corporation of India and another**, 2021 (2) SCC 551;

lxxxii. **Anglo French Textiles** vs. **Cestat, Chennai**, 2018 (362) E.L.T. 576 (Mad.);

lxxxiii. **Madan Lal Arora** vs. **The Excise and Taxation Officer, Amristar**, [1961] 12 STC 387 (SC)

lxxxiv. **Transworld Shipping Services Private Limited** vs. **Government of India**, 2018 (361) E.L.T. 176 (Mad.);

lxxxv. **Mr.J.Sheikparith** vs. **The Commissioner of Customs (Sea port-Exports) Chennai, The Additional Director General Directorate of Revenue Intelligence South Zonal Unit, Chennai**, 2020 (9) TMI 311.

8. On behalf of the respondents CTD (Commercial Tax Department), following cases were cited:-

(a) **Commissioner of Income Tax (Central) - I, New Delhi** vs. **Vatika Township Private Limited**, (2015) 1 SCC 1;
(b) **Allied Motors Private Limited** vs. **Commissioner of Income Tax, Delhi** (1997) 3 SCC 472;
(c) **Commissioner of Income Tax – I, Ahmedabad** vs **Gold Coin Health Food Private Limited**, (2008) 9 SCC 622;
(d) **Zile Singh** vs. **State of Haryana and Others**, (2004) 8 SCC 1;
(e) **Jayam and Company** vs. **Assistant Commissioner and Another**, (2016) 15 SCC 125;
(f) **ALD Automotive Private Limited** vs. **Commercial Tax Officer Now upgraded as Assistant Commissioner (CT) and Others**, (2019) 13 SCC 225;
(g) **C.Bright, Managing Trustee, K.S.M.Educational& Charitable Trust** vs. **District Collector and others**, (2019) SCC Online Mad 2460;
(h) **Union of India and Others** vs. **A.K.Pandey** (2009) 10 SCC 552;
(i) **Commissioner of Income Tax, Bhopal** vs. **Shelly Products and another**, (2003) 5 SCC 461;

(j) **State Bank of India** vs. **V.Ramakrishnan and another**, (2018) 17 SCC 394;

(k) **S.Sundaram Pillai and Others** vs. **V.R.Pattabiraman and others**, (1985) 1 SCC 591;

(l) **Madhav Steel Corporation** vs. **State of Gujarat** (2014) 72 VST 318 (Guj);

(m) **Bharat Coop. Bank (Mumbai) Ltd.**, vs. **Cooperative Bank Employees Union**, (2007) 4 SCC 685;

(n) **M/s.Mahalakshmi Oil Mills** vs. **State of Andhra Pradesh**, (1989) 1 SCC 164;

(o) **Punjab Land Development and Reclamation Corporation Limited, Chandigarh** vs. **Presiding Officer, Labour Court, Chandigarh and Others**, (1990) 3 SCC 682;

(p) **M/s.Schwing Stetter (India) Private Limited** vs. **The Commissioner of Commercial Taxes and another**, in the High Court of Madras in W.P.Nos.37604 and 37605 of 2007 and others dated 05.04.2016;

(q) **Sri Vinayaga Agencies** vs. **The Assistant Commissioner (CT), Vadapalani I Assessment Circle and Another**, (2013) SCC Online Mad 323, (2013) 60 VST 283 (Mad);

**Tax Cases (T.C.)**

9. We shall first narrate the brief facts of the cases in these Tax Cases. These Tax Cases arise out of a Common Order passed by the Sales Tax Appellate Tribunal (herein after referred to as 'STAT') in Coimbatore in **Sales Tax Appeal Nos.91 to 93 of 2016.**

10. These appeals were filed by the Commercial Tax Department before STAT against order of the Appellate Deputy Commissioner (CT)(FAC) partly allowing the appeals and partly remanding the cases back to the Assessing Officer for the following Assessment Year as detailed below:-

**TABLE-I**

| **T.C.Nos.** | **Assessment Year** | **Date of the Assessment Order** | **Order dated 31.12.2015 of the Appellate Deputy Commissioner (CT)(FAC) in Appeal Nos.** | **I.O. Of the STAT dated 16.11.2021 of the STAT in Sales Tax Appeal Nos.** |
|---|---|---|---|---|
| 20 of 2022 | 2010-2011 | 28.05.2015 | 155 of 2015 | 91 of 2016 |
| 21 of 2022 | 2011-2012 | 28.05.2015 | 156 of 2015 | 92 of 2016 |
| 19 of 2022 | 2012-2013 | 28.05.2015 | 157 of 2015 | 93 of 2016 |

11. The petitioners in the above Tax Cases is a dealer. After, monthly returns were filed for the respective assessment years, the assessments were reopened and revised assessment order were passed based on the report received from inspection conducted at the place of the business of the petitioner.

12. The petitioner herein had earlier filed a Writ Petition before this Court in W.P.Nos.21963 to 21965 of 2015. These Writ Petitions were disposed by directing the petitioner to file a statutory appeal against the assessment orders that came to be passed on 26.05.2015. Thus, the petitioner preferred a statutory appeal before the Appellate Deputy Commissioner (CT) (FAC), Erode in AP.Nos.155 to 157 of 2015. These appeals were partly allowed. Aggrieved by the same, the State preferred appeal before the Sales Tax Appellate Tribunal (STAT) in Appeal Nos.91 to 93 of 2016.

13. Relevant portion of the impugned common order of Sales Tax Appellate Tribunal (STAT)reads as under:

> "*7. Both sides argument was heard and the written statements filed were examined with reference to the records produced by both parties. The points raised for consideration in this present appeal are as below:-*

**IA**

| Point | Category | Year | Amount of Rev.ITC |
|---|---|---|---|
| A | Due to cancellation of registration | 2010-11<br>2011-12<br>2012-13 | Rs.2,44,821-00<br>Rs.2,52,492-00<br>Rs.93,535-00 |
| B | Purchase from Masani Industries, Senthur Murugan Sunlight Boards | 2010-11<br>2011-12 | Rs.3,43,528-00<br>Rs.4,67,600-00 |
| C | Selling dealer not paid | 2010-11<br>2011-12<br>2012-13 | Rs.21,32,351-00<br>Rs.17,22,838-00<br>Rs.24,53,056-00 |
| D | Levy of penalty u/s. 27(4) | 2010-11<br>2011-12<br>2012-13 | Rs.13,60,350-00<br>Rs.24,42,930-00<br>Rs.25,46,591-00 |

***Note:*** *There is no need for any discussion on capital goods because, the revenue in the form prescribed have not included the same as the relief claimed. So also, for the reasons that the first appellate authority has given certain extent of relief on capital goods leaving the balance as remanded. Nowhere in the orders issued, it was quantified for the remanded portion. As the claim on any capital goods was sought for relief provided for in form A, the question of discussion on such point does not arise. So, the point for consideration in this appeal would be as follows:-*

**Point (a) and (b)**

*8. The dispute involved in these two category is the reversal ITC due to cancellation of registration of selling dealers, for three years in respect of item No.(a) and for two years in respect of item No.(b) which is related to particular dealers.*

i. *In respect of (a) both before the first appellate authority and before this Tribunal the respondent dealers furnished evidences to the effect that the dealers* ***registration was cancelled with retrospective effect*** *and in such cases the reversal ITC made is not justifiable as decided in many decisions like in the case of JINSAN Distributors vs. Commercial Tax Officer, Chennai reported in 59 VST 256.*

ii. *As rightly given with findings by the first appellate authority this dispute, it is a matter of issue on "covered decisions" that were relied on both by the dealer and by the first appellate authority for the reason of which no need to repeat them.*

iii. *In cases relating to certain specific dealers ie., Masani Industries and Senthur Murugan sunlight board, the respondent dealers had sufficient proof for the inadvertent mistake of furnishing the TIN number of their erstwhile registration numbers or the inadvertent mistake adopted by the assessing authority in taking consideration of the date of constitutional change of registration. As such there is no reasonableness in making the reversal tax credit in respect of the items referred to in point No.(b) above.*

*9. So. Considering the above facts, we are of the view that the first appellate authority had rightly deleted the reversal ITC of Rs.(Rs.244821-00+252492-00+93535-00+343528-00+467600-00) (for the years 2010-11, 2011-12 and 2012-13) aggregating to Rs.14,03,976-00*

*involved in item No.(a) and (b) above, and hence this forum find no reasons to interfere in the deletion of the reversal ITC involved in item No.(a) and (b) above.*

*12.**Therefore this appellate Tribunal is of the considered view to concur with the findings of the first appellate authority in deletion of the above reversal tax credit and it is ordered accordingly in favour to the respondent/dealer.***

**Point (c)**

**Rev.ITC on selling dealer not paid:**

*13 As for as this issue is concerned, though the respondent/dealers produced tax invoices to the effect that they are in possession of the same, as rightly contended by the revenue, they never prepared to come forward to produce the material evidences**for the proof of movement of goods** from the selling dealer. The decision reported in 82 VST 324 of Hon'ble High Court of Gujarath in which it was held that "However while claiming input tax on the purchases, the dealer was also required to prove and establish the actual movement of goods and the genuiness of the transaction. **Mere production of the bills, vouchers etc., was not sufficient to claim the input tax credit".***

*14. Therefore considering the facts that the respondent/dealer had not proved the movement of proof but claimed only on the ground of possession of the tax invoice, which alone is not sufficient to claim the input tax credit, as per the principles laid down in the decision reported in 82 VST 324. **But in this case such evidences were not produced**. More over, the respondent dealer ought to have produced relevant Bank statement for proof of having the receipt of consideration by the selling*

*dealer on those transaction of sales. Only after discharging these kind of burden of proof, the purchaser could be exonerated from the liability. For making such kind of investigation on these point of proof, we are of the view and considered view that it would be appropriate to remand this portion of dispute to the assessing authority for making investigation as per the guidelines issued in Para 4 of the circular issued by the Commissioner of Commercial Taxes in Circular No.5/2021 (I.W10/12521/2016/dated 24.02.2021).*

*15.We are therefore hold to remit back the reversal ITC of Rs.21,32,351-00, Rs.17,22,838-00 and Rs.24,53,056-00 respectively, relating to the year 2010-11, 2011-12 and 2012-13 falling under the category (C) and it is ordered accordingly.*

**Point (d)**

**Levy of penalty**

*16. It is found that the assessing authority has invoked Section 27(4) of the Act which warrants levy of penalty in cases of fraud, mis statement, production of false bills with intention to evade tax.*

*the decision of the Honourable STAT (MB) in the case of State of Tamilnadu vs. Indra Industries, Katpadi in STA No.127/2016 dated 22.06.2016 wherein it was held that "In fact penalty under Section 27(4) of the Act could be invoked only in the case where there is wrong availment of input tax credit by producing false bills, vouchers, declaration certificates with a view to support his claim of input tax credit and it has to be levied on a graded scale as prescribed under sub section (4) of section 27 of the TNVAT Act".*

***17.*** *In the present case of the appeal, the levy of penalty was made not on account of any reasoning of fraud, mis-statement or production of any false bills. Therefore the decision cited above squarely applies to the case.* ***The orders of the first appellate authority in deleting the levy of penalty is therefore ordered to be up held and ordered accordingly.***

*In fine,*

i. *Point No. (a), (b) and (d) are decided in favour to the dealer and against the revenue.*
ii. *Point No. (c) is remanded back to the assessing authority.*

*In the result, the state appeal filed in CTSA 91/2016, 92/2016 and 93/2016 are "****Partly Dismissed and Partly Remanded****".*

14. In these appeals, the appellant has raised the following questions of law:-

"6. Questions of law raised for decision by this Hon'ble High Court:

(a) *Whether in the facts and circumstances of the case, the Hon'ble Appellate Tribunal was correct, in law, in passing the impugned order on a ground which never formed part of the appeal of the Respondent before Appellate Tribunal?*

(b) *Whether in the facts and circumstances of the case, the Hon'ble Appellate Tribunal was*

*correct, in law, in passing the impugned order against the principles of law laid down by the Apex Court in the cases of* ***Bachhaj Nahar v. Nilima Mandal and Anr. MANU/SC?8199/2008 and Warner Hindustan Limited vs. CCE – 1999 (113) ELT 24 (SC)****?*

(c) *Whether in facts and circumstances of the case, the Hon'ble Appellate Tribunal was correct, in law, not following the judgments passed by this Hon'ble Court in* ***Althaf Shoes (P) Ltd vs. Asstt. Commissioner – MANU/TN/5302/2011; Sri Vinayaga Agencies vs. Assistant Commissioner (CT) and Another – MANU/TN/1386/2013 and D.Y.Beathel Enterprises vs. State Tax Office – 2021 – TIOL-890-HC-MAD-GST****, which involved facts and circumstances identical to those involved in the present case in complete violation of principles of judicial discipline?*

(d) *Whether in the facts and circumstances of the case, the Hon'ble Appellate Tribunal was correct in travelling beyond the scope of papers and objections on record and relying on the judgment of the Hon'ble High Court of Gujarat in the case of* ***Shree Bhairav Metal Corporation vs. State of Gujarat – 82 VST 324****, wherein, the order was passed based on completely different set of facts and circumstances vis-à-vis facts and circumstances obtaining in the present case?*

(e) *Whether in the facts and circumstances of the case, the Hon'ble Appellate Tribunal was correct, in law, in passing the impugned order*

*against the observation / directions of this Honorable Court contained in the order dated 22.07.2015 passed in the petitioner's own case?*

*(f) Whether in the facts and circumstances of the case, the Hon'ble Appellate Tribunal was correct in passing the impugned non-speaking order without giving any findings on the submissions made by the petitioner in complete violation of principle of natural justice, fair play and equity?*

*(g) Whether in the facts and circumstances of the case, the Hon'ble Appellate Tribunal was correct in passing the impugned non-speaking order without giving any finding on the documents submitted by the petitioner in support of its claim for ITC in complete violation of principle of natural justice, fair play and equity?*

15. In support of the case of the petitioner in **T.C.Nos.19, 20 & 21 of 2022 (Tvl.Sahyadri Industries Limited)**, learned counsels for the petitioner Mr.Mahesh Raichandran and C.Suraj submitted as follows:-

*"2.1* ***First,*** *the Appellate Tribunal remanded the matter back to the assessing officer on a basis/reason/ground which never formed part of the proceedings of the respondent from audit stage to the appeals filed before the Appellate Tribunal. It is well settled law that the court or tribunal cannot make a new case at tribunal stage which was never pleaded before it. In this connection reference was made to* ***Reckitt & Colman of India Ltd vs. Collector of Central Excise*** *– 1996 (88) ELT (SC) -*

*Para 3 refers;* ***Warner Hindustan Limited vs. CCE*** *- 1999 (113) ELT 24 (SC) – Para 2 refers; &****Saci Allied Products Ltd vs. CCE – 2005 (183) ELT 225 (SC)*** *– Paras 17, 18 & 19 refers.*

*2.2* ***Second,*** *the issue of denial of ITC on account of selling dealers not filing Form – I return is settled in favor of the petitioner through judgments of this Hon'ble Court. Kindly see: (i)* ***Althaf Shoes (P) Ltd – Paras 3, 9 & 10 refers****; (ii)* ***Sri Vinayaga Agencies – Paras 6, 8 & 10 refers*** *&(iii)* ***Infiniti Wholesale Ltd – Paras 4, 9, 22, 23 & 24 refers****. These judgments were submitted at the time of hearing and form part of the first typed set. The Appellate Tribunal has overlooked and ignored the above binding precedents in clear violation of principles of judicial discipline and decorum.*

*2.3* ***Third,*** *the petitioner submits that reliance on the judgement of the Hon'ble Gujarat High Court in the case of* ***Shree Bhairav Metal Corporation*** *is completely misplaced and out of context. In the said case, the registration certificate of the selling dealer of the assessee stood cancelled and it was alleged that M/s Lucky Enterprises is not a genuine dealer and had indulged in to billing activities and all the transactions were found to be bogus and non-genuine. Para 2of the said judgment refers. There is no such case or facts here. There is no allegation / finding that the Petitioner's suppliers were indulged in any sort of bogus or non-genuine transactions.* ***the registration certificate or the existence of the selling dealer of the petitioner was never under doubt or dispute throughout the course of the above proceedings****. Therefore, the above judgement has no relevance / applicability in the facts of the present case. It is well settled that no decision can be read ignoring the facts of that case and the points which arise for determination in that case. Kindly*

*See:* ***Union of India and Others v. Dhanwanti Devi and Others (1996) 6 SCC 44 –*** *Para 10 refers.*

*2.4* ***Fourth,*** *without prejudice, Para 4 of Circular No. 5/2021 dated 24.02.2021 categorically clarifies that for the period up to 2013-14, the notice issued for the first would be hit by limitation. Once this is the case, there is no question of the above circular having any application in the facts of the present case as the period of dispute is 2010-11, 2011-12 & 2012-13 and the proceedings, if any, at the end of the selling dealer stand barred by limitation. Be that as it may, Rule 6(11) of the TN VAT Rules, 2007, inter alia, provides that accounts maintained by a registered dealer shall be preserved by him for a period of six years from the date of assessment (previously five years – six years effective from 2012). Therefore,the so called purported fresh investigation in terms of Circular No. 5/2021 dated 24.02.2021 is an impossibility as the selling dealer may not possess the accounts / records / documents pertaining to the period under dispute – 2010-11, 2011-12 & 2012-13.*

*2.5 Assuming whilst vehemently denying, even if the condition of delivery / movement of goods is to be taken as applicable in the facts of the present case, the same would not affect the eligibility of ITC at the hands of the petitioner in the present facts for the reasons explained infra.*

*2.6* ***First****, the presumption is that any amendment is prospective and not retrospective, unless there is a specific mention or implicit indication. In the present case, there is no such mention or indication in the proviso to section 19 of the TNVAT Act, 2006. Per contra, it is clearly provided and stated that the amendment would be operative from 14th October,*

*2015.*

*2.7* ***Second****, an amendment to a substantive provision cannot be retrospectively applied. The condition of 'delivery of goods' is a substantive provision in itself. It is not procedural in nature. Hence, in the instant case, the proviso inserted in section 19 is not a clarificatory provision.*

*2.8* ***Third****, in the case of* ***CIT v. Vatika Township Private Ltd. - (2015) 1 SCC 1,*** *the Hon'ble Supreme Court has clarified the position regarding general principles against retrospectivity as principle of 'fairness' while holding that legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective.*

*2.9* ***Fourth****, an assessee cannot be asked to reverse input tax credit which he has rightfully availed based on law which existed during that period. We may refer to decision of the Hon'ble Supreme Court in* ***CCE vs. Dai IchiKarkaria Limited2002-TIOL-79-SC-CX-LB****where it was held that credit once rightfully earned is an indefeasible right. Thus, where the petitioner has earned the credit under section 19 of the Act, prior to the amendment / introduction of the proviso, it would not be hit by the amended provision.*

*2.10 Similarly, in* ***Eicher Motors Ltd. vs Union of India &Ors -2002-TIOL-149-SC-CX-LB****, the Hon'ble Supreme Court refused to apply a modified rule to previous tax period wherein the assessee had already paid the tax and availed modvat credit.*

*2.11* ***Fifth,*** *the intention of the Legislature has to be gathered from the language used. Even if it is assumed that there was an intention to provide cure*

*to the existing provision, the same must flow from the language of the provision. The legislature says what is means and means what it says. There is no room for intendment or logic or presumption.*

*2.12* ***Sixth****, the Ld. Assistant Solicitor General, during the course of hearing, relied upon the provisions of Section 64 of the TNVAT Act to buttress his arguments with respect to retrospective applicability of the amendment to Section 19. The petitioner submits that reliance on Section 64 is completely misplaced and out of context. The said provision only provides for maintenance of accounts by the dealer. The said provision has no relevance for the issue under dispute. The said provision does not contain any condition for availment of ITC. The said provision has no reference to the provisions of Section 19 or vice-versa. Therefore, reliance on the same is of no relevance for the issue under dispute.*

*2.13 In view of the above submissions and judgments, the impugned order has no legs to stand and the same must be quashed and set aside."*

16. There is no final determination on the issue which has been remanded back. The assessment orders pre-date the amendment to Section 19(1) of TNVAT Act, 2006 with effect from 29.01.2016 vide Tamil Nadu Act, 13 of 2015.

17. Although the Writ Appeals and Writ Petitions were argued as if the issues therein were confined to denial of input tax credit availed

under Section 19(1) of the TN VAT Act, 2006, it was noticed that there were several other issues also in the assessment orders which was challenged before the Writ Court and before this Court in this connected Writ Petitions/Writ Appeals.

18. The learned counsels who appear for the Writ Petitions and Writ Appeals have made elaborate submissions on this scheme of TN VAT Act, 2006 to persuade as to held that input tax credit availed by the petitioners and the writ appellants cannot be denied. Therefore, we will reproduce important submissions of the counsels in these Writ Petitions/Writ Appeals, before we answer the issue.

19.In support of the case of the appellant in **W.A. No.2714 of 2021** (**M/s. Sameera Timbers and Plywoods**), learned Counsel Mr.S.Ramanathan submitted as follows:-

*(1) Reversal of ITC for the reason that no documents in proof of movement of goods were filed is not correct.*

*(2) The amendment Act 13/2015 which is to the effect*

*that the delivery of goods has to be proved is with effect from 29.1.2016.*

*(3) The assessment year relates to 2011-12. As per the provision existed during that period, it is enough if it is proved that tax has been paid on the purchases effected as per Section 19(1) of the TN VAT Act read with Rule 10(2) of the TN VAT Rules. The show cause notice and the orders were passed prior to the amendment.*

*(4) Original Invoices – Proof for payment – Monthly return of the sellers was filed. The ITC was reversed that no proof for movement of goods were filed.*

*(5) The Respondent has reversed the ITC stating that the registration certificate of the sellers were cancelled with retrospective effect.*

*(6) The Petitioner has purchased the goods when the registration certificates of the sellers were in force and for retrospective cancellation, ITC cannot be reversed.*

*(7) The issue is covered by the decision reported in 59 VST Page 256 – Madras High Court in the case of Jinsasan Distributors. The Hon'ble Court in W.P. No. 34743 of 2014 dated 23.12.2014 has held that the above reason is not sustainable.*

*(8) The Petitioner has filed invoice copies in proof of payment of tax. The Petitioner has filed the monthly returns of the sellers. The Sellers registration was in force when the petitioner effected the purchases. As per the decision of the Madras High Court in the case of* ***JKM Graphics Limited,*** *reported in 99 VST page 343 and the clarification of the commissioner enquiry has to be made on the sellers also.*

*(9) Originally Respondent levied Penalty at 50% of the tax as per Section 27(4) (i) of the Act. After*

*remand, the Respondent has levied Penalty at 150% of the tax, which is against the provisions of the Act and without any authority of law as there is no provision to levy penalty at 150% as per Section 27(4) of the Act on the date of assessment order which is dated 27.02.2015. As per section 27(4) (i) of the act, penalty to be levied is at 50% if it is first detection and as per section 27 (4) (ii) penalty to be levied is at 100%, if it is second and subsequent detection. There is no provision to levy penalty at 150% before amendment. No show cause notice was also issued proposing to levy penalty at 150% of tax. This is against the provision of Section 27(4) proviso.*

20. In support of the case of the appellants in W.A.Nos.2637 to 2640 of 2021 **(Tvl.Selva Furnitures),** W.A.Nos.119, 125, 131 & 135 of 2022 **(M/s.SSB Industries)** and W.A.Nos.1194, 1195, 1197 & 1201 of 2022 **(M/s.Amman Industries)**, learned counsel Mr.N.Prasad submitted as follows:-

(1) *"**Enquiry"** - It is most respectfully submitted, that Section 27(2) requires determination "**after"** making an **enquiry**. Thus,assessment must be preceded by an enquiry. The enquiry is at two stages, namely, prior to the commencement of assessment and after the commencement of assessment – reference was invited to (i) 1977 – 39 STC page 478 (SC) (at page additional typeset – Volume -I in WA No.119/2022 – page 71 at page*

*76). (ii) 2017 – 99 VST page 343 (MAD) (page 45 – Case Laws Volume – II in WA No.119/2022, at pages 74, 77, 78, 79. It was submitted that in the second case, even while noticing that there were allegations of bogus transactions, this Hon'ble Court found the need for a mechanism for proper enquiry. Vide paras 23 & 56. The mechanism was formed vide Circular No.5/2021 dated 24.02.2021 issued by the Principal Secretary/Commissioner of Commercial Taxes and directed to be applied by this Hon'ble Court in WP No.929 of 2021 dated 26.11.2021 – vide page 30 of Volume IV – WA No.2637 of 2021. There is no writ appeal by the Revenue against this order.*

*(2) The allegation in the show cause notice was one of collusion with the buyer to pass on input credit without transaction of sale. The alleged revenue loss is that though there is no transaction of sale made by the Appellant, the Appellant has issued tax invoices to buyers to enable such buyers to have input tax credit which those buyers would have, used, for payment of tax on sale of goods effected by them from unaccounted purchases made by those buyers – allegation in Notice dated 24.02.20216 – page 24 – A in W.A.2637 of 2021. There was no enquiry with the buyer. If the charge was one collusion, the buyer ought to have been enquired. Collusion is a pact between two people to defraud a third person. Kindly see 1984 (1) SCC page 612 – page 4 Volume II at page 10 (para 11). Thus the need for enquiry. There is also no enquiry with the assessment circles of the vendor and the buyer, though tax payment by buyer is proved.*

*(3) It was further submitted that the power to enquire is available under Section 81 of the Act. The assessing authority is like a Civil Court and must make an enquiry. Kindly see 2011 – 38 VST page*

*45 (MAD) (page 110 additional typeset–Volume-I in WA No.119/2022 at page 116 to 121).*

*(4) Failure to conduct an enquiry is in violation of principles of natural justice – kindly see 1977 – 29 STC page 378 - page 76, at page 77, 78 additional typeset – Volume-I in WA No.119/2022.*

*(5) It is most respectfully submitted that, the tax law to be applied is the law prevailing during the relevant assessment year. Kindly see 1980 (1) SCC page 139 – page 1 Volume IV (WA No.2637/2021 at page 3): Civil Appeal No.299/2002 dated 29.03.2007 – page 1 (Volume-III at page 2 - para 3), (page 5 – para 8), (page 6 – para 9). Thus, Section 19(1) and Rule 10(2) prior to 29.01.2016 is to be applied, for the prior Assessment Years.*

*(6) It is most respectfully submitted that credit is a vested right. ( 1999 (2) SCC page 361 – page 18 Volume IV (para 5).*

*(7) It was further submitted that, the substituted proviso inserted by TN Act 13 of 2015, is substantive and therefore prospective, because it is restriction on existing right. A law which imposes a restriction on right is substantive law. Kindly see 1971 (2) SCC page 860 – page 4 – Volume IV Case Laws in WA No.2637/2021 (paras 6 & 10).*

(8) ***Contradictions in the Assessment.*** *It is submitted that, the Assessments suffer from the following contradictions. It was submitted that, the impugned assessments, even while, looking to disallow, the input tax credit, on the ground that that the purchases and sales of the Appellants are make believe, yet retain the output tax paid by the Appellant.While disallowing the input tax credit at the hands of the Appellant, the output tax by the*

*Vendors, is not refunded to the Vendors who are registered dealers and whose registration is recorded in the impugned Assessment.*

(9) *Finally, Without prejudice submission**, to the above contention,** It was submitted, that, if it is found that substituted proviso is retrospective, "actual delivery", includes constructive delivery. The expression "actually" occurs in two places of the substituted proviso. "Actually" is in reference to a fact which has actually occurred and does not refer to the quality of delivery. Kindly see AIR 1969 KER page 38 (page 77 Volume IV in WA No.2637/2021 at page 82 (para 14).*

*(10)It is most respectfully submitted that actual delivery will include constructive delivery – (i) AIR 1955 SC page 182 – page 170 Volume IV – WA No.2637/2021 at page 174 (para 14). (ii) 1961-12 STC Page 147Page 176 – Vol. IV – WA 2637 of 2021 at Page 179 – VOL IV.*

(11) *It was submitted that if the substituted proviso to Section 19(1) is construed as applicable only for actual physical delivery and not actual constructive delivery, then, the substituted proviso to Section 19(1) will be in conflict with Section 3(3) which allows set off for every category of sale and delivery. Also, while there will be charge or liability on every type of sale and delivery under Section 3(2) credit will stand denied in cases involving constructive delivery.*

(12) *It was submitted that that even if the amended proviso to section 19(1) is found to apply to the period prior to 29.01.2016 the terms of the proviso may be found satisfied if the assessee produces*

*"proof of delivery" though not proof of movement. The amendment does not require proof that the goods have been moved. It only requires proof that the goods have been "actually delivered".*

*(13) In reply to the submissions of the Revenue:*

i. *It was submitted that that the Revenue has placed reliance on Section 19(16) of the TNVAT Act, 2006. It is submitted that, Section 19(16), can be invoked, only when, the input tax credit is "incorrect, incomplete or otherwise not in order". It is respectfully submitted that the claim for ITC may not be treated as incorrect or incomplete when there is compliance with Section 19(1) and Rule 10(2).*

ii. *The principle of delivery of goods is implicit in the Scheme of the Act and placed reliance on Section 64(3) of the Act. The Revenue has placed reliance on Section 64. It is respectfully submitted that, the question is as regards requirements under Section 19(1) prior to TN Act 13 of 2015 and not, scope of Section 64. In any view an invoice is one of the documents under Section 64. It is respectfully submitted that the Legislature or the Government can provide a certificate / form as condition for concession and treat the form as conclusive. Kindly see 1986 (2) SCC page 501 – page 12 – Volume II at page 22 (at para 33).*

iii. *It was further submitted that the Revenue has placed reliance on certain decisions of the Hon'ble Supreme Court of India. The*

*appellants respectfully wish to submit as under on the case laws cited by the Revenue.*

| Sr. No. | Citation given by the Respondent / Revenue | Reply of the Appellants |
|---|---|---|
| 1. | 2016 (15)SCC page 125 (SC) page 99 of Respondent's case laws set | It is respectfully submitted that the said decision emphasises tax invoice is relevant for ITC. Kindly see paragraphs 10, 11 & 12 of the judgment. Further, the retrospective operation of the amendment was struck down holding that credit was vested right – paragraph 19. This is under TNVAT Act. |
| 2. | 1997 (3) SCC page 472 (SC) page 66 of Respondent's case laws set | It is respectfully submitted that this decision, dealt with insertion of first proviso to Section 43-B, whose insertion was to grant relief to the assessee, while avoiding unintended consequence. The amendment was beneficial – vide paragraphs 10 to 14. It was not a provision creating new disability. |
| 3. | 2015 (1) SCC page 1 (SC) page 35 of Respondent's case laws compilation | It is respectfully submitted that the decision only held that while subsequent legislation imposing new disability, will be treated as prospective, fresh legislation granting relief will be retrospective. Kindly see paragraphs 28 to 30. It was also held that when there is no ambiguity in the prior law, subsequent law will not be treated as declaratory – vide paragraph 32. |
| 4. | 2008 (9) SCC page 622 (SC) – vide page 75 of Respondent's case laws compilation | It is respectfully submitted that the background to the amendment to the Income Tax Act was an uncertainty in legal position. Kindly see paragraph 5 of the judgment which parliament sought to put at rest. Again, it was found that when the prior law was unambiguous a statute |

| | | |
|---|---|---|
| | | cannot be treated as declaratory – vide paragraph 19. |
| 5. | 2003 (5) SCC page 461 (SC) – vide page 164 of Respondent's case laws compilation | It is respectfully submitted that, it was found that the amendment was intended to clarify doubts which existed on account of conflicting decisions – vide paragraph 38. On the contrary, as regards, the input credit under Section 19(1) the law prior to TN Act 13 of 2015 was unambiguous and only required production of tax invoice from registered seller. |

***E. <u>Submission on Alternative Remedy:</u>***

i. *It is most respectfully submitted that failure to conduct an enquiry is in violation of the principles of natural justice – kindly see – 1977 (39) STC page 478 (SC) – page 71 additional typeset volume I – at page 76.*

ii. *It is most respectfully submitted that whether provision is prospective or retrospective is a pure question of law – hence Writ will lie – 2009 (14) SCC page 338 – additional typeset volume 1 in WA 119 of 2022 – page 109.*

21. In support of the case of the appellant in **W.A. No. 451 of 2022**

**(M/s. JBM Dakshin),** learned counsel Ms.Aparna Nandakumar, submitted as follows:-

**MOVEMENT OF GOODS – PROPOSITION**

**Proposition I : Indefeasible Right to ITC**

*The fundamental principle of a vat system is the indefeasible right of input tax credit available to the purchaser of goods.*

i. *1. Eicher Motors Limited and Ors v. Union of India 1999 (106) ELT 3 (S.C .) [Page No. 1 to 5]* ***Para 5 and 6 at Page 5.***

ii. *2. Collector of Central Excise, Pune and Ors. v. Dai IchiKarkaria Ltd. and Ors. 1999 (112) ELT 353 (S.C.) [Page No. 6 to 16]* ***Para 19 at Page 13.***

iii. ***Case Law Under Eu VAT :****Mahagebenkft v Nemzeti Ado- es Vamhivatal Del-dunantuliRegionalis Ado F?igazgatosaga and Peter David v Nemzeti Ado- es VamhivatalEszak-alfoldiRegionalis Ado F?igazgatosaga(C-80/11), (C-142/11), 21 June 2012* [Page No. 128 to 138]* ***Para 33 at Page 133; Para 37 to 40 at Page 134.***

**Proposition II : Extent of Burden of Proof**

| Proviso Prior to Amendment | Proviso Post Amendment |
|---|---|
| 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 | Provided that the registered dealer, who claims input tax credit, shall establish that the tax due On purchase of goods has actually been paid in the manner prescribed by the registered dealer who sold such goods and that the goods have actually been delivered |

1. ***Sri Vinayaga Agencies v. Assistant Commissioner*** *(CT) and Ors. MANU/TN/1386/2013 [Page No. 69 to 72]* ***Para 6 to 11 at Page 71 and 72.***

2. *Assistant Commissioner (CT), Vadapalani I Assessment Circle and Ors. v. Sri Vinayaga Agencies MANU/TN/7257/2020 [Page No. 111 to 113]* ***Para 6 to 8 at Page No.113.***

3. *The requirement in similar provisions of Delhi VAT Act that the purchaser has to establish that the tax has been actually paid by the selling dealer has been held to be ultra vires and violative of Article 14 of the Constitution of India. SLP filed by the department against this Judgment is dismissed. On Quest Merchandising India Pvt. Ltd. and Ors. v. Government of NCT of Delhi and Ors. MANU/DE/3276/2017; [Page 73 to 91]* ***Para 19 at Page 77 and Para 54 at Page 91.***

4. *Commissioner Of Trade and Taxes Delhi V. Arise India Limited Special Leave to Appeal (C) No(s). 36750/2017 Dated 10.01.2018 [Page 92 to 93].*

5. *Gheru Lal Bal Chand v. State of Haryana and Ors. (2012)ILR 2Punjab and Haryana781. Challenge to validity of similar provisions of Haryana VAT Act. [Page 24 to 36]* ***Para 18 at Page 30, Para 34 at Page 36****.*

6. *R.S. Infra-Transmission Ltd. v. State of Rajasthan D.B. Civil Writ Petition No. 12445 / 2016 dated 11.04.2018 [Page 94 to 110]* ***Page 110.***

7. *Mahalaxmi Cotton Ginning Pressing and Oil Industries, Kolhapur v. The State of Maharashtra and Ors. MANU/MH/0620/2012 [Page No. 37 to 62]* ***Para 6 at Page 41 and 42, Para 38 at Page 55.***

**Proposition III : The amendment to proviso by way of substitution is substantive in nature and prospective AND NOT procedural in nature and retrospective**

1. *There has been paradigm shift in the perspective and scope of burden of proof to be discharged by the purchaser.*

2. *It creates a new obligation which was not contemplated in the earlier existing provisions.*

3. *It cast an onerous responsibility to prove a fact which is beyond the control and knowledge of the purchaser in the absence of any machinery provisions to supplement the stringent requirement of the amended proviso. Therefore, the substituted proviso is a substantive provision and the amendment is not declaratory or procedural and hence the same is only prospective.*

4. *The amended proviso has altered the substantive right of evidentiary standard from 'beyond reasonable doubt' to 'preponderance of probabilities'*

5. *Commissioner of Income Tax v. Vatika Township Private Limited (2014) 1 SCC 1 [Page No. 18 to 42 ]**Para 30 to 39 at Page No.34 to 42 of the Additional Typed Set of Papers II***

6. *Union of India (UOI) and Ors. v. Ganpati DealcomPvt. Ltd. MANU/SC/1028/2022 [Page No. 43 to 83 ]**Para 17.30 at Page No 80 of the Additional Typed Set of Papers II***

7. *Shanti Kiran India Pvt. Ltd. v. Commissioner Trade & Tax Deptt. [Page No. 63 to 68] **Para 7 at Page 66, Para 11 at Page 67.***

**Proposition IV : Actual Delivery**

*The requirement of actual delivery includes a symbolic and a notional delivery.*

*The onus of establishing and proving the allegation of tax evasion or fictitious transactions is only on the assessing authority in the absence of a proper mechanism as is found in Section 48(2) of the MVAT Act*

1. *Duni Chand Rataria v. Bhuwalka Brothers Ltd. AIR 1955 SC 182 [Page No.118 to 124] **Page 119 and 123 Para 14.***

2. *Commissioner of Central Excise, Chandigarh v. Neepaz Steels (India) (2007) 213 ELT 100 MANU/CE/8487/2007 [Page No.20 to 21].*

3. *Commissioner of Central Excise, Chandigarh v. Neepaz Steels (India) (2008) 230 ELT 218 [Page No.22 to 23]*

4. *D.Y. Beathel Enterprises v. The State Tax Officer (Data Cell) (Investigation Wing) MANU/TN/1459/2021 [Page No.114 to 117]*

5. ***Case Law under Eu VAT** :Bonik EOOD v DirektornaDirektsia 'Obzhalvaneiupravlenienaizpalnenieto' – Varna priTsentralnoupravlenienaNatsionalnataagentsia za prihodite, Case C-285/11, 6 December 2012 Page No. 139 to 146]* ***Page 142, Page 144 Paras 25 to 28, Page 145 and 145 Paras 39 to 43.***

6. *Maks Pen EOOD v DirektornaDirektsia 'Obzhalvaneidanachno-osiguritelnapraktika' Sofia Case C-18/13 dated 13 February 2014 [Page No. 147 to 158]* ***Page 156***

22. In support of the petitioner in W.P.No.12450 of 2019 **(M/s.Indo Metal Press Private Limited)**, learned counsel Mr.S.Rajasekar, submitted as follows:-

*"In the present case, the following substantial questions of law arise for consideration of this Hon'ble Court:*

(1) *Whether Input Tax Credit (in short ITC) availed by a Registered Dealer (Petitioner herein) after complying with the statutory requirements of Section 19(1) of the Tamil Nadu Value Added Tax Act, 2006 (in short the 2006 Act), read with Rule 10(2) of the Tamil Nadu Value Added Tax Rules, 2007 (in short the 2007 Rules) can be denied by the Respondent and whether at all Respondent had any jurisdiction to do so?*

(2) *Whether the conditions and restrictions subsequently inserted in the statutory provisions prospectively w.e.f. 29.01.2016 can be indirectly insisted for the earlier periods and whether in that guise, the VAT authorities can apply the amended law retrospectively?*

(3) *Whether the VAT authorities can impose conditions and restrictions for availment of ITC beyond the statutory provisions as the same stood during the relevant period?*

(4) *When section 19(10)(a) specifically provides about "Original Tax Invoice" duly filled, signed and issued by the selling registered dealer and containing the prescribed particulars as per rule 10 (2) as the relevant document for availing ITC and when such "Original Tax Invoices" are produced by the assessee, whether the VAT authorities can disallow ITC on the ground that the assessee did not produce documents showing "movement of goods"?*

(5) *In any event whether the Respondent had any jurisdiction to disallow the entire ITC aggregating to about Rs. 8.11 crores availed by the petitioner during the assessment period of 2012-13*

*Ø without specifying or supplying details of even one single invoice or one single vendor about whom any irregularity was noticed by the Department;*

*Ø without making any inquiries from the Supplying Vendors or from the petitioner's Buyers even though all the Vendors and all the Buyers were registered dealers under the 2006 Act having their TIN and RC Nos. duly mentioned in the respective invoices;*

*Ø and whether such disallowance of entire ITC was arbitrary, illegal and in violation of the principles of natural justice?*

*(6) What is the true scope and effect of sections 19 (13) and 19 (16) of the 2006 Act?*

*(7) Whether in the facts and circumstances of the instant case, conditions precedent for levy of penalty under Section 27(3)(c) of the 2006 Act existed or were at all satisfied and whether the levy penalty was patently without jurisdiction?*

*2. It is submitted that the petitioner are fabricators, metal sheet fabricators at Kancheepuram and assessee on the files of the Assistant Commissioner [ST], Kelambakkam Assessment Circle, Chennai – the Respondent in TIN No.33431603265. It purchases iron and steel goods from registered dealers in Tamil Nadu under cover of original tax invoices containing all prescribed details about the vendor's name, address, TIN number, amount of VAT paid etc. On the goods so purchased by the Petitioner, it availed input tax credit (ITC) of the VAT paid by the vendors as per the tax invoices in accordance with the provisions of the 2006 Act and the 2007 Rules.*

*3. The goods purchased by the petitioner were resold by it to registered dealers in Tamil Nadu. On all sales made by the Petitioner within the State of Tamil Nadu, it paid VAT at the applicable rates under the 2006 Act. All the said sales were made by the petitioner under cover of proper tax invoices containing all prescribed particulars about the buyers' names, addresses, TIN number, VAT paid etc.*

*4. For the assessment year 2012-2013 the petitioner had duly filed the monthly return in Form I reporting a total and taxable turnover under TNVAT Act, 2006.The petitioner's place of business was inspected by the Enforcement Wing Officials on 05.12.2013 wherein certain defects have been noticed.*

*5. Leaving apart various other defects which have been resolved, the present writ petition focuses only on the reversal of ITC on the pretext that proof regarding the actual movement of goods were not furnished.*

*6. To the various Notices issued, replies were filed by the petitioner which was ignored and the present impugned proceedings dated 27.03.2019 was issued by the Respondent.*

*Whether ITC availed by a Registered Dealer after complying with the statutory requirements of Section 19(1) of the 2006 Act read with Rule 10(2) of the 2007 Rules can be denied by the VAT authorities and whether the VAT authorities have any jurisdiction to do so?*

*1.It is submitted that the Petitioner fully complied with the aforesaid statutory requirements of Section 19(1) and Rule 10(2). All purchases in question were*

*made by it from the Registered Dealers and their original tax invoices in support of the claim of ITC containing the details and particulars mentioned above were duly produced by the Petitioner.*

*2.All these original tax invoices were duly filled, signed and issued by the Registered Dealers from whom the goods were purchased and the same contained the aforesaid prescribed particulars evidencing amount of input tax. All the invoices of the said purchases made by the Petitioner were duly filed by it and this has been admitted in the impugned order also.*

*3.As stated in the proviso to section 19 (1), the registered dealer claiming ITC was required to establish that the tax due on the purchases made by him has been paid and this was to be done "in the manner prescribed". The manner prescribed for this purpose was in Rule 10 and as per Sub-Rule (2), the Petitioner was required to produce the original tax invoice containing the required details. These requirements were duly and fully complied with and satisfied by the PetitionerDuring the relevant period, save as aforesaid, there was no other requirement under Section 19 or Rule 10 or any other provision of the 2006 Act or the 2007 Rules for availing the said ITC. The Petitioner having fully complied with the statutory requirements, the said ITC was lawfully allowable to it and the petitioner availed the said ITC fully in accordance with law and the VAT authorities had or have any jurisdiction to disallow the same.*

*4. Section 19 of the 2006 Act was considered by the Hon'ble Supreme Court in the judgment reported in (2016) 15 SCC 125 (**Jayam & Co Vs. Assistant Commissioner**). The Hon'ble Supreme Court was inter-alia pleased to hold that the original tax*

*invoice complete in all respects, evidencing the amount of input tax, is one of the most important documents/ conditions for availing ITC. In this connection, paragraphs 10 and 11 from the said judgment of the Hon'ble Supreme Court are reproduced below:*

"*10. From sub-section (10) of Section 19 onwards, provisions are made to follow the procedure and fulfil the requisite conditions for availing ITC. For the purposes of this particular issue, sub-section (10) is the material provision. This provision, which is couched in negative terms, categorically stipulates that such ITC would be admissible to the registered dealer and he would not be entitled to claim this credit "until the dealer receives an original tax invoice duly filled, signed and issued by a registered dealer from where the goods are purchased…". Further, such original tax invoice should evidence the amount of input tax. So much so, even if the original tax invoice is lost, the obligation cast on the registered dealer is to obtain duplicate or carbon copy of such tax invoice from the selling dealer and only then input tax is allowed.*

*11. From the aforesaid scheme of Section 19 following significant aspects emerge:*

*(a) ITC is a form of concession provided by the legislature. It is not admissible to all kinds of sales and certain specified sales are specifically excluded.*
*(b) Concession of ITC is available on certain conditions mentioned in this section.*
*(c) One of the most important condition is that in order to enable the dealer to claim ITC it has to produce original tax invoice, completed in all respect, evidencing the amount of input tax."*

*It is trite law that when the statute provides for a particular thing to be done in a particular manner, that thing must be done in that way and other conditions/ methods are impliedly and necessarily excluded. Reliance in this connection is placed on the following judgments of the Hon'ble Supreme Court:*

(a) *(2014) 2 SCC 401 (J.* ***Jayalalitha &Ors Vs. State of Karnataka****) (Para 34)*
(b) *(2008) 9 SCC 177: (****Meera Sahni Vs. LG of Delhi &Ors****) (Para 35)*

*Whether the conditions and restrictions subsequently inserted in the statutory provisions prospectively w.e.f. 29.01.2016 can be indirectly insisted for the earlier periods and whether in that guise, the VAT authorities can apply the amended law retrospectively?*

*5. Amendments made by the Tamil Nadu Value Added Tax (2nd Amendment) Act, 2015 are not retrospective or clarificatory and were specifically brought into force w.e.f. 29.01.2016 and cannot apply to the present case which relates to an earlier period.*

*6. The Tamil Nadu Value Added Tax (2nd Amendment) Act, 2015 received the assent of the Governor on 13.02.2015 and Section 1(2) thereof provided as under:*

"*It shall come into force on such date as the State Government may, by notification, appoint.*"

*7.By Notification dated 29.01.2016, the Governor of Tamil Nadu appointed 29.01.2016 as the date on which the said Amendment Act came into force. Thus, after receiving the assent of the Governor, the amendment was not brought into force for a period of about one year. The Amendment Act was specifically brought into force from 29.01.2016 and there can be no scope to apply it retrospectively.*

*8. By the aforesaid Amendment Act, several amendments were made to TN VAT Act and several Sections were amended. The definition "input tax" in Section 2(24) was amended to mean the "tax paid" as against "tax paid or payable" as existing prior to the amendment. Similar amendments were made in Sections 18(2), 19(1)(a), 19(4), 19(5)(b) and 19(9).*

*9.Simultaneously, Sub-Rules (2A) and (2B) were inserted in the 2007 Rules by G.O. M.S. No: 18 dated 29.01.2016 which came into force on 29.01.2016 providing as under:*

"*(2-A) Every registered dealer who claims input tax credit to the extent of the tax paid on purchases of taxable goods specified in the First Schedule to the Act from the other registered dealers inside the State, shall establish, whenever it is deemed necessary by the assessing authority, that the tax due on such purchase of goods has actually been remitted into the Government account.*

*(2-B) For the removal of doubts, it is hereby declared that, in no case, the amount of set-off or refund on any purchase of goods shall exceed the amount of tax in respect of the same goods, actually paid, if any, under the Act or any other Act referred to in section 88 of the Act, into the Government*

*treasury except to the extent where purchase tax is payable by the claimant dealer on the purchase of the said goods effected by him.";*

*10. The aforesaid amendments in the Act and the Rules were specifically made effective from 29.01.2016 and the same were prospective in operation and were not retrospective. The said amendments were substantive in nature and imposed new conditions and restrictions for the first time. Claiming of ITC was restricted to "tax paid" instead of "tax paid or payable" as earlier. Under the earlier Proviso to Section 19(1), the dealer claiming ITC was required to establish that the tax due on such purchases has been paid by him i.e., the recipient Registered Dealer. This provision was completely changed and under the amendment Proviso, the recipient dealer was required to establish that the tax due on purchases has actually been paid in the manner prescribed by the selling Registered Dealer who sold such goods and that the goods have been actually delivered. Similarly, under the new Sub-Rules (2A) and (2B), completely new conditions were imposed for the first time. The amendments were not declaratory or clarificatory in nature so as to clear up any alleged doubts. Onthe other hand, the said amendments created new obligations and imposed new conditions and restrictions for the first time.*

*11. Such amendments imposing new conditions and restrictions and/or which are particularly brought into force from a specified date cannot be said to be clarificatory or retrospective. This position of law is well settled by several judgments of the Hon'ble Supreme Court some of which are as under:*

(a) (2015) 1 SCC 1: CIT Vs. Vatika Township P Ltd (Para 33-35)
(b) (2016) 15 SCC 125: Jayam & Co Vs. Asst Commissioner (Para 14-19)
(c) (2016) 9 SCC 720: UOI Vs. Indusind Bank Ltd. (Para 18-24)
(d) (1997) 10 SCC 1: K. Gopinathan Nair &Ors Vs. State of Kerala (Para 20)
(e) (1997) 11 SCC 378: State of Maharashtra Vs. Suresh Trading

12. A similar issue was considered by the Hon'ble Delhi High Court in the judgment reported in (2013) 57 VST 405. In Delhi VAT Act also, after the amendment, several new conditions were incorporated including insertion of Clause (g) to Section 9(2) which required that the purchasing dealer has to establish that the tax paid by him has actually been deposited by the selling dealer. The Hon'ble High Court in paragraphs 13 to 16 of the judgment was pleased to hold that the said new condition for granting ITC benefit cannot be held to be a clarificatory one and it was introduced only w.e.f. 01.04.2010 and cannot be of any assistance to the Revenue for the earlier period (kindly see paragraphs 14 and 15 of the judgment).

13. However the fact that the said amendments are not retrospective and thus not applicable to the present case is quite clear from the submissions made above. In the guise of requiring further documents and details like lorry receipts, weighment slips etc., the respondents are indirectly making an attempt to enforce the conditions of the new proviso inserted in Section 19(1) even for the earlier periods and they have no jurisdiction, right or authority to do so. During the period prior to the said amendment, the legal obligations of Registered

*Dealer receiving the goods and taking ITC werethose enumerated in Section 19(1), 19(10) and Rule 10(2) and as stated above, these were fully complied with by the Petitioner.*

Whether the VAT authorities can impose conditions and restrictions for availment of ITC beyond the statutory provisions as the same stood during the relevant period?

*14. All the requirements for availing ITC are laid down in Section 19 and Rule 10. The scheme contained in Section 19 is a self-contained code covering all features of ITC. This was also so held by the Hon'ble Supreme Court in the case of Jayam & Co (supra). No new condition or restriction which is not there in the statute can be imposed by the VAT authorities. In support of this submission, reliance is placed on the following judgments of the Hon'ble Supreme Court:*

*(a) (2008) 14 SCC 336: Sandur Micro Circuits Limited Vs. CCE (Para 6)*
*(b) (2005) 3 SCC 363: CCE Vs. Sunder Steels Ltd. (Para 5)*
*(c) AIR 1970 SC 755: Hansraj Gordhandas Vs. Asst. CCE (Para 5)*
*(d) (2014) 15 SCC 625: Saraswati Sugar Mills Vs. CCE (Para 19)*

*It is also well settled that in tax law, one has to go by the plain language of the statute and there is no room for any intendment. Reliance in this connection is placed on the following judgment:*

*a. (2010) 14 SCC 751: CCS Vs. Doaba Steel Rolling Mills (Para 25, 28).*

*When section 19 (10) (a) specifically provides about "Original Tax Invoice" duly filled, signed and issued by the selling registered dealer and containing the prescribed particulars as per rule 10 (2) as the relevant document for availing ITC and when such "Original Tax Invoices" are produced by the assessee, whether the VAT authorities can disallow ITC on the ground that the assessee did not produce documents showing "movement of goods"?*

*15. As stated above, under sections 19 (1) and 19 (10) read with rule 10 (2), original tax invoice containing the prescribed particulars is the statutory document for availment of ITC and this position was also approved by the Hon'ble Supreme Court in Jayam's case (supra). When the statute mandates original tax invoice as the statutory document, the tax authorities cannot go beyond the said mandate.*

*16. In so far as the documents relating to "movement of goods" are concerned, these are relevant for the Central Sales Tax Act, 1956 where movement of goods from one State to another is the very essence of chargeability. However any such document is not prescribed under the 2006 Act or the 2007 Rules for availment of ITC and the VAT authorities have no jurisdiction to disallow ITC taken by the petitioner based on original tax invoices of its vendors containing all prescribed particulars.*

*17. As stated above, either in the show cause notice or in the impugned order not even one single invoice or one single vendor has been mentioned in respect whereof any irregularity was found by the Department nor any details or particulars of any such case were supplied to the petitioner.*

*18. At this stage reference may also be made to the prescribed "Form-I" which is the form for filing VAT Returns. The petitioner duly filed its monthly returns every month during the relevant period. As per the statutory form itself, in these Returns, inter-alia the following details were given about ITC, details of purchases and details of sales:*

*a. Purchase value of purchases made and VAT thereon.*
*b. Amount of ITC taken.*
*c. Sales Turnover during the month concerned and VAT thereon.*
*d. Annexure I to the Return (List of purchases made) giving inter-alia following details for the entire month:*

- *Name of the sellers*
- *Seller's TIN Numbers*
- *Commodity Code*
- *Invoice Numbers and Dates*
- *Purchase value, tax rate and VAT paid.*

*e. Annexure II to the Return (List of sales made) giving inter-alia following details for the entire month:*

- *Names of the buyers*
- *Buyer's TIN Numbers*
- *Sale value, tax rate and VAT paid.*

*18. Similar Returns along with their respective Annexures I and II were filed by the petitioner's vendors and by the petitioner's buyers and the entries in the returns fully tallied with the entries in the petitioner's returns.*

*23.2 Section 63A provides about the requirement of getting the accounts audited and Audit Report in Form WW is required be filed wherein the auditor certifies correctness of the details of purchases made, ITC*

*allowable, sales made, VAT payable and other particulars. These provisions were also duly complied with by the petitioner and the said audit reports were also filed by it.*

*19. In the format of the return as substituted on 29/01/2016, Annexure 8 relates to "List of Goods Purchased in the Course of Inter State Trade" and in relation to such purchases, the format itself requires the movement details such as, name of transport company, means of transport, number and date of transfer documents etc. Thus whenever such documents relating to movement were required to be produced by an assessee, it was specifically so mentioned and required in the Statute itself. However in respect of the local purchases there was never any such requirement and none can be insisted upon by the Department. As submitted above, when the statute requires a particular thing to be done in a particular manner and when the statute declares a particular document to be the statutory document for availing a particular benefit, such mandates of the statute have to be strictly followed and the VAT authorities cannot go beyond such mandate and impose any new condition or restriction not there in the statute.*

*In any event whether VAT authorities had any jurisdiction to disallow the entire ITC aggregating to Rs. 8.11 crores availed by the petitioner during the relevant year-*

Ø *without specifying or supplying details of even one single invoice or one single vendor about whom any irregularity was noticed by the Department in spite of the petitioner's asking these details;*

Ø *without making any inquiries from the Supplying Vendors or from the petitioner's Buyers even though all the Vendors and all the Buyers were registered dealers*

*under the 2006 Act having their TIN and RC Nos. duly -15-mentioned in the respective invoices;*

*and whether such disallowance of entire ITC was arbitrary, illegal and invoice and of the principles of natural justice?*

*20. Without pointing out a single instance of irregularity, the entire ITC of Rs. 8.11 crores has been disallowed arbitrarily and illegally and on a complete non-application of mind. The impugned order is completely perverse. The said entire credit of ITC was taken by the petitioner based on the statutory documents, namely, tax invoices of the selling vendors. The purchased goods were sold by the petitioner to registered dealers under tax invoices showing payment of VAT by the petitioner. All transactions were reflected in the returns filed by the petitioner and the details of each single invoice along with name, address and TIN of the party, number and date of the invoice, tax paid etc were mentioned and these details in the petitioner's returns tallied with the returns filed by the respective parties. In connection with the above, following are important:*

*(a) Not a single invoice has been alleged to be fake.*
*(b) Not even in respect of one single invoice the supplier has been alleged to be non-existent.*
*(c) Not even in respect of one single invoice, any discrepancy has been found about the tax amount mentioned in the invoice or about any other connected matter.*
*(d) Not even in one single case, TIN numbers and other particulars mentioned in the tax invoices have been found to be bogus.*
*(e) In many of the tax invoices, particulars of the vehicles were also mentioned. Not even in one single case anything wrong about*

*genuineness of the vehicles has been alleged.*

*(f) Not even in one single case any enquiry was made or any statement was recorded of the vendors even though their full address, TIN number and other particulars were duly mentioned in the invoices already filed with the VAT authorities.*

*21.The aforesaid sales turnover could take place only because the goods were purchased and then resold. Unless the goods were purchased, there was no scope for making the said sales. The tax paid by the petitioner on its sales turnover was more than the ITC availed by it and the said entire tax on the sales turnover was actually paid by the petitioner by utilising ITC available with it and by paying the balance through banking channel as permitted under the law. Full details of all such payments were mentioned in the returns. If there would have been no purchases, there would have been no resultant sales nor there would have been any question of payment of any sales tax/VAT on the sales turnover.*

*22.Quite surprisingly, at the time of collection of tax on the sales turnover, the Respondents are coolly collecting the said tax and accepting the sales turnover but when the purchases connected to the same sales turnover involving ITC are considered, they are seeking to take a diametrically opposite stand and deny the ITC as if there were no purchases. Such a stand on the part of the Department is completely arbitrary and illegal*

*23.As stated above, in the show cause notice, only general and vague allegations were made without any details or particulars. Even though the whole of ITC availed by the petitioner on purchase turnover was being sought to be disallowed by alleging that the vendors did not pay the VAT and were indulging in circular trading, not even a single such instance was pointed out. Not even one single invoice or one single vendor was named in*

*respect of which these allegations were made. These details and particulars, if at all any, were not supplied to the petitioner in spite of specific request made for that purpose in the petitioner's reply.*

*24.ITC is a statutory right of the assessee and if the Department proposes to disallow any part of it, it is incumbent and obligatory upon the Department to inform the assessee about full details and particulars of the invoices and the vendors in respect of which any discrepancy has been found or noticed by the Department. The VAT authorities are also bound to inform the assessee about results of the enquiries made by them, if at all any, and supply to it the supporting documents and evidence for making such allegations. The said statutory right cannot be defeated or nullified by making such general vague allegations without any supporting evidence or material and without informing the assessee about the same and then affording it proper opportunity to make its submissions with respect to such evidence relating to the invoice or the vendor for which ITC is being sought to be disallowed.*

*25.In the Show Cause Notice, except making general and vague allegations, not even one instance was pointed out with reference to any particular invoice or any particular vendor wherein any discrepancy was found. Without such details and particulars, it was impossible for the Petitioner to defend itself by filing proper reply along with documents and materials and evidence relating to the alleged violating instances. It is in these circumstances that in its reply dated 22.03.2017, the Petitioner inter-alia submitted as under:*

> "*We may further add that in case yourgoodself is still skeptical, you may verify the sellers retruns to evidence the fact that goods have indeed been sold and that their corresponding turnover has been duly reported to the Department vide monthly returns*

*filed."*

*26.The aforesaid request was also made at the time of personal hearing and it has been specifically recorded in the impugned order. In spite of this, this aspect of the matter has been completely ignored in the impugned order and the Respondent gave no reason or details as to why the said exercise was not carried out and as to how even without any such instances being pointed out, the ITC was being sought to be disallowed. In the impugned order, not a single discrepancy with reference to any particular invoice or any particular vendor has been pointed out and merely vague, unsubstantiated allegations have been made without any basis or material at all. The impugned order suffers from complete perversity and non-application of mind and is a nullity. In support of the aforesaid submissions, reliance is placed on the following judgments of the Hon'ble Supreme Court:*

*a) (2009) 2 SCC 192 (Kothari Filaments Vs. Commissioner of Customs) (Paragraphs 14 & 15): In this judgment, in paragraphs 14 and 15 it was held that a person charged with mis-declaration is entitled to "supply of documents" and only on knowing the contents of the documents he would be in a position to furnish an effective reply.*

*b) (2015) 3 SCC 49 (Associated Builders Vs. DDA) (Paragraphs 28 & 29): In this judgment, it was inter-alia held that quasi-judicial authorities cannot act in arbitrary, capricious or whimsical manner and that their decisions must not be actuated by any extraneous considerations. It was held that non-application of mind is a defect that is fatal to any adjudication.*

*c) (2009) 4 SCC 299 (Rajasthan State Road*

*Transport Corporation Vs. Bal Mukund Bairwa) (Paragraphs 34, 35): In this judgment, it was inter-alia held that an order passed in violation of the principles of natural justice is a nullity.*

*27.Even otherwise, the Respondents cannot deny ITC without any evidence or basis or material for any particular transaction and simply by making unsubstantiated and vague allegations. ITC can be denied only if any irregularity is found in respect of any transaction and for this purpose the Respondents are bound to examine each individual transaction and then decide as to whether ITC in respect of that transaction was in any way disallowable. Reliance in support of this submission is placed on the following judgments of the Hon'ble Supreme Court.*

*(a) 1970 (1) SCC 622 Tata Engineering and Locomotive Co Ltd vs The Assistant Commissioner of Commercial Taxes (paragraphs 9, 12)*
*(b) 1997 (94) ELT 458 Collector of Central Excise vs Partap Steel Rolling Mills (Supreme Court).*

*What is the true scope and effect of sections 19(13) and 19(16) of the 2006 Act?*

*28. Section 19 (13) on its own plain language can apply only if a registered dealer without entering into a transaction of sale, issues an invoice, Bill etc to another registered dealer, with intention to defraud the government revenue and if that be so, the assessing authority has been empowered, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the assessee concerned, to deny the benefit of ITC. These ingredients and conditions precedent for applicability of the said section do not at*

*all exist in the present case. As stated above, the VAT authorities have not pointed out even a single invoice where any such irregularity was found by them nor have they pointed out even a single vendor who did not pay the input tax mentioned in its tax invoice. If at all any action is intended to be taken under the said section, these are conditions precedent have to be satisfied by the VAT authorities and the dealer concerned has to be supplied with all details and documents of the particular invoices and the particular vendors in respect whereof any such irregularity has been found by them along with the results of the enquiries made by them so that the assessee may make its proper submissions in the matter. The said section can never be invoked by making such general, vague and unsubstantiated allegations without even naming even one single invoice or one single vendor which according to the VAT authorities is sought to be branded as irregular.*

*29.Sub-Section (16) of Section 19 reads as under:*

*(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.*

*In the present case, the said ITC was availed by the Petitioner after fully complying with the statutory provisions. The amount of VAT on the goods purchased by the petitioner was evident from the vendor's invoices which were the specified documents for this purpose as per the statute. Nothing wrong has been found by the respondents about the tax invoices. No ITC was taken by the Petitioner incorrectly or on the basis of any incomplete invoice and there was nothing which could be regarded as "otherwise not in order" in the invoices or in the said ITC taken by the Petitioner. The expression "or*

*otherwise" can only be read ejusdem generis with the earlier expressions, namely, 'incorrect' or 'incomplete' and it can only mean that the ITC was taken incorrectly or it was incomplete. This is not at all the position in the present case. It is not as if the said expression can be construed to mean conferment of an arbitrary, uncontrolled or unguided discretion upon the officers concerned to act as per their own whim and fancy. In support of this submission that the expression "or otherwise" should be construed ejusdem generis with the earlier expressions, reliance is placed on the judgment of the Hon'ble Supreme Court reported in (1975) 4 SCC 176: CED Vs. Parvathi Ammal (Para 13)*

*30.It is further submitted that even otherwise as per the rule of construction noscitur a sociss, meaning of a word is to be judged from the company it keeps and it is a legitimate rule of construction to construe the words in a statute with reference to the words found in immediate company. For this reason also, the expression "or otherwise" has to be read having the same colour as that of the expressions 'incorrect' or 'incomplete'. In support of this submission, reliance is placed on the judgment reported in (2017) 7 SCC 540: ParleAgroPvt. Ltd. Vs. CCT (Para 42-44).*

*31.It is further submitted that Monthly Returns for each month are required to be filed by the 20th day of the succeeding month. For the entire period, the Monthly VAT Returns were duly filed by the Petitioner. Throughout the period and even thereafter for several years till the issuance of Show Cause Notices, the Petitioner was never required by the VAT authorities to file any movement documents. As stated above, the Act or the Rules do not require filing of any movement documents. However, if the VAT authorities so required, it was incumbent upon them to inform the Petitioner after filing of the Return for the month concerned at the earliest point of time. No such*

*step was taken during the entire period and even thereafter for several years. Now, at this stage, it is simply not permissible for the VAT authorities to require any movement document for the entire purchase turnover.*

*The submissions made in the preceding paragraphs are also fully supported by the following judgements of this Hon'ble Court*

*32.The aforesaid interpretation of the provisions of Section 19 in similar circumstances is fully supported by the following judgments of this Hon'ble Court:*
*a. (2012) 50 VST 179: Althaf Shoes (P) Ltd. Vs. Assistant Commissioner (CT): It was held that when the purchasing dealer has complied with Section 19(1) and Rule 10(2), its claim for ITC cannot be denied by the Revenue by any length of reasoning (Paragraphs 10 and 11).*

*b.(2013) 60 VST 283: Sri Vinayaga Agencies Vs. Assistant Commissioner (CT) In this judgement of this Hon'ble Court, by relying on Section 19(1) and Rule 10(2), it was held that when these provisions were complied with and self-assessment was made under Section 22(2), there was no question of denying the ITC. Section 19(16) was also analysed and it was held that it does not empower the authorities to revoke the ITC on the plea of any default on the selling dealer's part.*

*c.(2016) 93 VST 202: Lakshmi Textiles Vs. Commissioner of Commercial Taxes: In this case, following the judgment in Sri Vinayaga Agencies the Writ Petition was allowed.*

*d. (2017) 97 VST 391 Computer Consultants Vs. Assistant Commissioner (CT): In this judgment also, the law laid down in Althaf Shoes and Sri Vinayaga Agencies was followed.*

*e. (2017) 97 VST 395 Faiveley Transport Rail Tech. India Ltd Vs. Assistant Commissioner: In this judgment, by following the law laid down in the earlier judgments mentioned above, the Writ Petitions were allowed.*

*f. (2017) 99 VST 341 Assistant Commissioner (CT) Vs. Infiniti Wholesale Ltd: This was a judgment of a Division Bench of this Hon'ble Court and it was held that if there is any default on the part of the selling dealer, the action lies against the defaulting seller but not against the purchaser and ITC taken by the purchasing dealer based on the Invoice generated by the selling dealer cannot be disallowed.*

*g. 2009 (23) VST 118: Sujana Universal Vs. Deputy CTO: In this Division Bench judgment of this Hon'ble Court, it was held that the initial burden under Section 10 will get discharged by the buying dealer by production of sale bill and registration number of the seller and thereafter it is for the Department to verify the accountings of the selling dealer. It was further held that the reasons given by the Revenue that the transactions were only between bill traders were not supported by any materials and were mere surmises.*

*33.In so far as the burden of proof under Section 17(2) is concerned, the said burden was duly and fully discharged by the Petitioner by producing the statutory documents required for this purpose under the provisions of Section 19 and Rule 10 as mentioned in the preceding paragraphs. No other document was mentioned in the Act or in the Rules to be filed by the assesse availing the ITC. The Respondent cannot simply allege at this stage after expiry of several years that movement documents were not filed. No such movement documents were required to*

*be filed under the Act or the Rules. As stated in the foregoing paragraphs, save and except alleging baseless suspicion, the Respondent has not relied upon or mentioned in the show cause notice or in the impugned order any document or enquiry report or particulars or details relating to even one single case where any irregularity was found. In fact in the show cause notice or in order, there was no reference to even a single invoice are single vendor where any irregularity was found as stated above. It is well settled that suspicion, however strong, cannot be a substitute for proof. Reliance is placed in this regard on the following judgments:*

*a. (1980) 3 SCC 110 (Abdulla Muhammad Vs. State) (Paragraph 20).*

*b. (1993) 3 SCC 564 (UoI Vs. Brij Fertilizers P Ltd) (Paragraph 8).*

*34.In so far as the Respondent's power to make enquiry is concerned, firstly, the show cause notices were issued several years after end of the relevant assessment years but no details of any enquiries or enquiry reports or materials or evidence or any invoice or any vendor were mentioned in the show cause notices or even in the orders passed thereon. After passing the said orders, the respondent cannot make any grievance about its power to make enquiry.*

*35.Secondly, the said power under Section 27(1) and 27(2) is qualified by the expression "after making such enquiry as it may consider necessary". The said power, on the basis of the plain language of the statute itself, is to be exercised within the parameters of the Act and the Rules. However, now at this late stage after several years, the Respondent cannot require the Petitioner to produce the documents relating to movement of the goods purchased by it. There was no such statutory requirement*

*during the entire relevant period. If at all in any particular case the VAT authorities have any reasons to believe about any irregularity, it is incumbent and obligatory upon them to inform the Petitioner about such particular instance/ instances and supply to it all enquiry reports and evidence so as to enable it to deal with the same. However no such documents or details or informations were supplied or referred to or relied upon in the show cause notices or in the orders. The respondents cannot make any fishing or roving enquiry. In this connection, reliance is placed on (2015) 11 SCC 628 (Tata Chemicals Ltd. Vs. Commissioner of Customs) wherein, in paragraph 15, the Hon'ble Supreme Court was pleased to hold inter-alia as under:*

"*Statutes often use expressions such as "deems it necessary", "reason to believe", etc. Suffice it to say that these expressions have been held not to mean the subjective satisfaction of the officer concerned. Such power given to the officer concerned is not an arbitrary power and has to be exercised in accordance with the restraints imposed by law."*

*36.In so far as the ingredients of "sale" are concerned, all the ingredients of Section 2(33) were fully satisfied. All details about the seller, buyer, consideration etc. were mentioned in the tax invoices which were the sale documents transferring the property to the Petitioner. All tax invoices showed the payment of tax as well as the consideration charged for the goods by the seller. There was no other statutory requirement. Even Section 64(3) of the 2006 Act provides three documents, namely, Bill of Sale or Delivery Note or other prescribed document. Thus, Bill of Sale, namely, Invoice, is a document mentioned in the Statute itself. There is no question of the Petitioner having discharged only the "initial burden" and not "rest of the burden". The burden was fully discharged by producing the required statutory documents.*

*37.In so far as the provisions of the CST Act are concerned, the very basis of application of CST Act is movement of goods from one State to another and admittedly the present case does not relate to CST.*

*38.Even though in the present case there was delivery of all the goods purchased by the Petitioner as mentioned above, the legal position under the Sale of Goods Act, 1930 is inter-alia to the effect that a contract of sale may be made in writing or by word of mouth or may even be implied from the conduct of the parties. In the trade, it is quite normal to receive oral orders on telephones and then to buy the goods from registered dealers and direct them to give delivery instructions for dispatch the goods to the places of the Petitioner's buyers directly. When the goods are purchased, the registered dealer issues its own tax invoice on the Petitioner and when the goods are sold by the Petitioner, it issues its own tax invoice on its buyer. This is a normal trade practice which holds good not only with the Petitioner but with other traders in the State also and there is no restriction in this regard in the provisions of law.*

*39.Under Section 33 of the 1930 Act, delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery. The vendors from whom the goods were purchased by the Petitioner have never disputed the sales made to the Petitioner and as evidenced from the tax invoices issued by the vendors on the Petitioner. Similarly, the Petitioner's buyers have never disputed the sales made by it to the said buyers and as evidenced by the tax invoices issued by the Petitioner. All the purchase and sales transactions were duly completed between the parties concerned by delivering the goods as per the instructions of the buyer concerned. A third party cannot challenge the transactions between the buyers and the sellers even otherwise.*

*Re: Alternative remedy:*

*40.It is submitted that in the present case, the Respondents have proceeded in the matter and passed the said impugned order raising the said huge and exorbitant demands in gross violation of the provisions of law and wholly without jurisdiction and/or in excess of jurisdiction. The Respondents are proceeding in the matter arbitrarily, on a complete non-application of mind and in palpable misuse of the powers conferred upon them. The issues raised herein go to the very root of the jurisdiction of the Respondents to initiate the proceedings in question and to raise the said demands. The impugned proceedings and the impugned order are wholly without jurisdiction and contrary to the specific statutory provisions as me-ntioned in detail in the preceding paragraphs. It is submitted that in the facts and circumstances of the instant case, it is just, reasonable and proper that the instant Writ Petition may kindly be decided by this Hon'ble Court and appropriate reliefs be granted to the Petitioner. In support of this submission, reliance is placed on the following judgments:*

(a) *(1998) 8 SCC 1: Whirlpool Corpn Vs. Registrar of Trade Marks (Para 14-21)*
(b) *AIR 1963 SC 548: State Trade Corporation of India Vs. State of Mysore*
(c) *(1973) 1 SCC 633: Raza Textiles Vs. Income Tax Officer*
(d) *AIR 1967 SC 1401: TELCO Vs. Assistant Commissioner of Commercial Taxes*
(e) *AIR 1961 SC 372: Calcutta Discount Co. Ltd. Vs. Income Tax Officer*

*41.1 respectfully submit that application of a wrong law results in a jurisdictional error committed and therefore the discretion vested in this Hon'ble Court to exercise powers under Art. 226 of the Constitution is not ousted.*

*In the reported judgment of the Hon'ble Apex Court in [2006] 286 ITR 89 (SC) Arun Kumar V Union of India it has been held as follows:*

> *"A Jurisdictional fact' is a fact which must exist before a court, Tribunal or an authority assume jurisdiction over a particular matter. A Jurisdiction fact is one on the existence or non – existence of which depends the jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends if the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming the existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess. The existence of jurisdiction fact is thus the sin qua non or conditional precedent for the exercise of power by a court of limited jurisdiction.*
>
> *If the jurisdictional fact exists, the authority can proceed with the case and take an appropriate decision in accordance with law. Once the authority has jurisdiction in the matter on existence of the jurisdictional fact it can decide the fact in issue or adjudicatory fact. A wrong decision on a fact in issue or on an adjudicatory fact would not make the decision of the authority without jurisdiction or vulnerable provided the essential or fundamental fact as to existence of jurisdiction is present."*

*The petitioner submits that the amendment to Proviso to section 19 cannot also be held as clarificatory in view of the latest decision of the Division Bench of this Hon'ble Court in WA No.4292 of 2019 dated 04.03.2020 wherein the*

*period 2009-10 was allowed in favour of the assessee.*

*The present assessment year 2012-13 also being prior to the amendment carried out in section 19 would also be benefited by the above Hon'ble Division bench decision.*
*In view of the above submissions it was prayed that the impugned orders may be set-aside in the circumstances of the case and thus render justice.*

23. In support of the case of the petitioner in **W.P.Nos.1226,1230 & 1239 of 2021** (**M/s.A.S.Textiles**), learned Counsel Mr.P.Rajkumar submitted as follows:-

1. *Amendment made to section 19(1) of the TNVAT Act,2006 by amending Act 13 of 2015 with effect from 29.1.2016 is a substantive amendment and is prospective in nature.*

2. *Through the amendments brought in with effect from 29.1.2016, the buying dealers to claim the input tax credit have to establish that theselling dealers have actually paid the tax on their sales effected to the buying dealers and also should establish that the goods have actually been delivered.*

3. *According to the department, the above said amendment make it mandatory for the dealers/buyers who claims input tax credit shall establish the actual payment of tax and also establish the actual delivery. Further according to the Department, the amendment is by way of*

*substitution and so it would be retrospective in nature.*

4. *If according to the Department, the Amendment made to section 19(1) of the TNVAT Act,2006 by Amendment Act 13 of 2015 is retrospective in nature, then it would create new disabilities or obligations or impose new duties in respect of transactions already accomplished. Therefore the above said amendment made to section 19(1) of the TNVAT Act is a substantive amendment which would have only a prospective effect and cannot be applied for transactions already accomplished.*

5. *The Hon'ble Supreme Court in the case of* ***M/s.Hitendra Vishnu Thakur &Ors Vs State of Maharastra reported in 1994(4) SCC 602(Para 26)*** *and also in the case of* ***Shyam Sunder and Others Vs Ram Kumar and Another reported in (2001) 8 SCC 24( Copy of these judgements submitted at the time of hearing )*** *have held that held as :*

   i. *A Statute which affects substantive rights is presumed to be prospective in operation unless made retrospective , either expressly or by necessary intendment, whereas a statute which merely affects procedure , unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.*

   ii. *Law relating to forum and limitation is procedural in nature , whereas law relating to right of action and right of appeal even through remedial is substantive in nature.*

iii. *Every litigant has a vested right in substantive law but no such right exists in procedural law.*

6.***A procedural statute should begenerally speaking be applied retrospectively where the result would be to create new liabilities or obligations or to impose new duties in respect of transactions already accomplished.". It is submitted that a*** *statute which not only changes the procedure but alsocreates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."*

*7. For an amended provision to have a retrospective operation, the amendment should be either expressly or by necessary implication retrospective.* ***In this connection,*** *following judgements of the Hon'ble Supreme Court were relied upon:-*

i. *Controller of Estate Duty Gujarat-I Vs M.A.Merchant 1989 Supp (1) SCC 49;*
ii. *Govinddas Vs Income Tax Officer reported in (1976) 1 SCC 906;*
iii. *C.I.T.,Bombay Vs Scindia Steam Navigation Co, 1962(1) SCR 78;*
iv. *Commissioner of Income Tax Vs Vatika Township Private Limited,*
v. *(2014) 1 SCC 1;*
vi. *S.E.B.I Vs Alliance Finstock Ltd &Ors reported in (2015) 16 SCC 731;*
vii. *Order dated 19.2.2021 passed in W.P.Nos.8255 & 8256/2016 in the case of Sri Rajeswari Stores Vs State of TN &another*

***8.*** *CERTAIN PROVISIONS OF THE TNVAT ACT,2006 DO NOT MENTION ABOUT THE MAINTENANCE AND POSSESSION OF TRANSPORT DOCUMENTS WHILE SALE OR PURCHASE IS EFFECTED INSIDE THE*

*STATE PRIOR TO 29.1.2016 AND EVEN AFTER 29.1.2016*

i. *Section 64(3) of the TNVAT Act only envisages that every registered dealer or person who moves goods in pursuance of a sale or purchase or otherwise from one place to another shall send along with the goods moved a bill of sale or delivery note or such other documents , as may be prescribed.*
ii. *Section 67(2), Section 67(3) and Section 67(5) of the TNVAT Act,2006.*
iii. *Section 69 of the TNVAT Act,2006.*
iv. *Rule 6(2)(a),Rule 6(2)(b) and Rule 6(2)(c) of the TNVAT Rules.*

*9. CERTAIN AMENDMENTS MADE IN THE TNVAT RULES WITH EFFECT FROM 29.1.2016 INSISTS FOR PROOF OF PAYMENT OF TAX TO CLAIM INPUT TAX CREDIT AND ALSO TRANSPORTER'S WAY BILL IN FORM MM*

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i. *Rule 10(2-A) of the TNVAT Rules was inserted as per G.O.Ms. No.18 dated 29.1.2016*
ii. *Rule 15(3)(a) of the TNVAT Rules and its proviso were substituted for Rule 15(3) as per GO.Ms.No.18 dated 29.1.2019.*
iii. *The insistence for proof of payment of tax by the earlier seller as per Rule 10(2-A) of the TNVAT Rules and carrying the electronic way bill in Form MM along with sale bill or delivery note while moving the goods for sale or purchase as provided in Rule 15(3)(a) were introduced only from 29.1.2016 and therefore it is evident that the above said amendments that these amendments are substantive in nature and would have only prospective*

*effect. In other words, the transactions already completed prior to 29.1.2016, the proof of movements of goods along with electronic way bill in Form MM cannot be demanded.*

iv. *Similarly with effect from 29.1.2016, Rule 15(14) & 15(15) of the TNVAT Rules were replaced wherein electronic Form KK has to be generated by clearing and forwarding agent.Similarly with effect from 29.1.2016 , Rule 15(17)(bb) was introduced wherein electronic transit pass in Form LL has to be generated and carried along with the goods.*

v. *Similarly, with effect from 29.1.2016,Rule 15(18)(a) was replaced for Rule 15(18) of the TNVAT Rules, 2006 as per this new Rule for the purpose of sections 67-A,68 & 69 , the owner or other person in charge of a vehicle or boat shall carry a bill of sale or delivery note in electronic Form JJ, a transporter's declaration in Electronic Form MM and the declaration in electronic KK in the case of movement of goods by clearing and forwarding agents.*

***1. CERTAIN PROVISIONS OF THE SALE OF GOODS ACT,1930 DEALING WITH "DELIVERY" AND ITS RELEVANCE***

i. *The word " delivery" or the phrase " have actually been delivered" introduced in the proviso to section 19(1) of the TNVAT Act with effect from 29.1.2016 by Amendment Act 13 of 2013 has to be understood with reference to the word "delivery " as defined in section 2(2) read with section 33 of The Sale of Goods Act,1930.*

ii. *Delivery may be actual or constructive. "Delivery" is constructive when it is effected without any change in the actual possession of the thing delivered, as in the case of delivery by attornment or symbolic delivery. Thus, in view of the provisions of section 2(2) read with section 33 of the Sale of Goods Act,1930, a symbolic delivery of possession of goods , divesting the seller's possession and lien may be sufficient compliance of the Act.*

***2. VIOLATION OF PRINCIPLES OF NATURAL JUSTICE IN THE PETITIONER'S CASE***

i. *In the notices dated 13.4.2017 issued for the asst years 2013-2014 to 2015-2015, there was no proposal to levy penalty under section 27(3) of the TNVAT Act , whereas in the assessment orders dated 26.6.2019, penalty was levied under section 27(3) of the TNVAT Act. After the assessment orders dated 26.6.2019 were set aside and remitted back, the first respondent issued fresh notices dated 19.3.2020 in which also there was no proposals to levy penalty under section 27(3) of the TNVAT Act. But strangely enough in the impugned assessment orders dated 30.11.2020, the first respondent has imposed penalty under section 27(3) of the TNVAT Act,2006. So on the question of violation of principles of natural justice ,the levy of penalty under section 27(3) of the TNVAT Act has to be set aside.*

ii. *Further the levy of penalty under section 27(3) of the TNVAT Act in respect of reversal of ITC is clearly contrary to the provisions of the TNVAT Act,2006.*

***3. ENQUIRY ALREADY CONDUCTED WITH THE SELLING DEALERS AND REVISION NOTICES TO MAKE ASSESSMENTS ON THEM ALREADY ISSUED***

i. *The Commercial Taxes Department has already made enquiry as contemplated under section 19(13) of the TNVAT Act with the selling dealers, M/s.Latha Traders and M/s.R.Mani Traders and pursuant to such enquiries, revision notices dated 13.1.2017 have been issued by CTO, Karur(East) Asst Circle to R.Mani Traders for the years 2013-2014 and 2014-2015 and a revision notice dated 12.1.2017 has been issued for the year 2015-2016. Similarly revision notices dated 6.1.2017 have been issued by the CTO, Karur(West) Asst Circles for the years 2012-2013,2013-2014 and 2014-2015 to M/s.Latha Traders.*

ii. *So having taken steps to make assessments in the hands of the selling dealers, passing the impugned assessment orders on the petitioner stating that the earlier sellers have not reported and paid the tax on the sales transactions effected to the petitioner is contrary to the provisions of the TNVAT Act,2006 and the law laid down by the Hon'ble Madras High Court in the case of Vinayaga Agencies reported in 60 VST 283 and affirmed by the Division Bench in the case of Infiniti Wholesale reported in 99 VST 341.*

iii. *In view of the above submissions and the judgements of the Hon'ble Supreme Court and*

*this Hon'ble Court, the petitioner respectfully prays that this Hon'ble Court may be pleased to quash the impugned orders and render justice.*

24. In support of the case of the petitioner in **W.P No. 18761, 18766 & 18769 of 2021**(**Aassaan Commodity Trade**)., learned Senior Counsel Mr.N.L.Raja for N.Murali -Advocate, submitted as follows:-

*A) During the relevant years (AY 2012-13 to AY 2014-15), neither Section 19 of the TNVAT Act, 2006, nor any other provision in the enactment stipulated that for the availment of input tax credit, gods must have actually been delivered to the dealer who claims the input tax credit. The delivery could be, as provided under Section 33 of the Sale of Goods Act, 1930, be in the manner as mutually agreed between the parties.*

*B) The stipulation of actual delivery for the availment of input tax credit was inserted vide the proviso to Section 19(1) of the TNVAT Act, 2006, by Act 13 of 2015. Although the amendment was legislated on 14/10/2015, it was brought into force prospectively only from 29/01/2016, vide Notification No 21/2016.*

*C) Once the amending enactment expressly states that the substituted provision shall come into force from the date the amendment comes into force, the said provision could only be prospective in nature. Since the substituted proviso to Section 19(1) was explicitly brought into force only from 29/01/2016, the stipulation of actual delivery cannot be applied to availment of ITC for the preceding years. In this regard, reliance is placed on the following case laws:*

*i. **Govardhan M v. State of Karnataka**, 2012 SCCOnline Kar 9088 - (See para Nos. of the report - ¶5, ¶29)*

ii. ***K. Sashidhar v. Indian Overseas Bank,*** *(2019) 12 SCC 150 -( See para Nos. of the report ¶71, ¶75, ¶76, ¶80)*

*D. Since Input Tax Credit is a substantive and vested right of the assessee, the stipulation of actual delivery which is a new condition imposed by Act 13 of 2015, cannot be applied with retrospective effect for the previous assessment years. In this regard, reliance is placed on the following case laws:*

I. ***Govind Das v. ITO,*** *(1976) 1 SCC 906 - See para Nos. of the report ¶11.*
II. ***Suhas H. Pophale v. Oriental Insurance Co****. Ltd., (2014) 4 SCC 657 - See para Nos. of the report ¶45-54.*

*E. Section 2(d) of the Contract Act, 1872, and Section 33 of the Sale of Goods Act, 1930, recognize the paramountcy of party autonomy in matters of consideration and delivery. Section 33 of the Sale of Goods Act expressly recognizes that the delivery of goods which are sold may be per the agreement between the parties – the delivery could be actual, symbolic, notional, physical or . A constructive delivery would also result in the transfer of property in goods. There is nothing in law which does not permit two sales simultaneously. In this regard, reliance is placed on the decision CIT v. High Energy Batteries India Ltd, [2012] 348 ITR 574 (Mad) - See para Nos. of the report ¶9.*

*F. In a chain of transactions, there could be one physical delivery and multiple constructive deliveries which result in transfer of property in goods throughout the chain eoinstanti. In this regard, reliance is placed on the decision of the Constitution Bench of the Supreme Court in Duni Chand Rataria v. Bhuwalka Brothers, AIR 1955 SC 182, See para Nos. of the report ¶15.*

*G. Even assuming for the sake of argument that the condition of actual delivery would retrospectively apply for the period prior to 29/01/2016, the term "actually" cannot be interpreted narrowly to mean physical but should be interpreted to encompass constructive and symbolic deliveries. In this regard, reliance is placed on the decision of the Constitution Bench of the Supreme Court in Duni Chand Rataria v. Bhuwalka Brothers, AIR 1955 SC 182, See para Nos. of the report ¶14-16.*

*5. In a chain transaction, the flow of credit with respect to one party alone cannot be questioned when the ITC claims of all other parties have been accepted.*

*A) The principal object for the enactment of TNVAT Act, 2006, was to avoid the cascading effect of taxes and ensure the seamless flow of credit.*

*B) In a chain transaction where there is a principal physical delivery and multiple constructive deliveries at the same instant, the claim of credit of one party in the chain alone cannot be disputed while the claim of other parties in the chain are accepted. This discriminatory treatment would not only be contrary to the object of the TNVAT Act, 2006, but also to Article 14 of the Constitution of India.*

*C) In this case, the claim of ITC of the Petitioner alone has been questioned even though the claim of other parties have been accepted by the department. This is despite the fact that the goods were supplied by the manufacturer to the Governmental undertaking at the*

*instance of the Petitioner.*

6. Violation of principles of natural justice

***A.*** *The impugned order is in violation of the principles of natural justice and also travels beyond the contours of the notice.*

***B. The allegations and findings in pages 13 to 21 of the impugned order (pages 50 to 59 of the paperbook filed in the writ petition) for AY 2012-13 WP 18761 of 2021)*** *and* ***the allegations and findings in pages 7 to 13 of the impugned order for the AY 2013-14 (pages 53 to 59 of the paper book filed in the writ petition & for the AY 2013-14 – WP 18766/2021) are outside the ambit of the notices issued to the Petitioner****. Neither a notice nor an opportunity of personal hearing was given to the Petitioner.*

***C.*** *In the AY 2012-13, an amount of Rs.25,93,971/- has been additionally reversed in the impugned order towards which there was neither any proposal in the notices dated 10/03/2016 or 15/03/2021 nor was the petitioner afforded any opportunity to show-cause.*

***D.*** *In the AY 2012-13 an amount of Rs.14,99,489/- has been reversed as ITC towards which there was neither any proposal in the notice nor was the petitioner afforded an opportunity to show-cause.*

***E.*** *The Respondent had prejudged the issue in the notice dated 15/03/2021 by recording his remarks after the Petitioner's reply date 30/03/2016.*

***F.*** *The Petitioner relied upon the following case laws in its challenge to the violation of principles of natural justice of the impugned order:*

I. ***Oryx Fisheries Private Ltd v. UOI,*** *2010 (12) SCC 427;*
II. ***MC Technologies v. Food Corporation of India****, 2021 (2) SCC 551;*

25. In support of the case of the petitioner in **W.P. No.11808, 11814, 11816, 11811,11812 and 11819 of 2022(M/s Sharda Motors Industries Limited**), learned Counsel Mr.Rama Badran for M/s. Lakshmi Kumaran and Sridharan, Advocates, submitted as follows:-

*1. The only ground on which the Input Tax Credit ('**ITC')** is denied is that the Petitioner has failed to prove the physical movement of goods from the place of the vendor to the place of the Petitioner. The Impugned Orders record that reversal of the ITC is demanded in light of the amendment carried out in Section 19(1) of the TNVAT Act vide Gazette No 217 Act No 13 of 2015, dated 14.10.2015 which is effective prospectively from 25.01.2016 ('**the Amendment**').*

**Submissions**

*2. ITC has been availed on satisfaction of all requirements under Section 19(1) of the TNVAT Act. In absence of any statutory requirement under Section 19(1) of the TNVAT Act requiring proof for "movement of goods", denying ITC is illegal and beyond provisions of TNVAT Act.*

2.1 *Section 19(1) of the TNVAT Act states that the registered purchasing dealer shall take ITC on output tax, which is paid or payable, after establishing that such tax has been paid by the purchasing dealer to the selling dealer (until 28.01.2016).*

2.2 *It is an admitted fact that these requirements have been duly satisfied by the Petitioner. Hence, ITC has been duly availed. Reliance in this regard is also placed on the decision of this Hon'ble Court in* ***Assistant Commissioner (CT), Vadapalani I Assessment Circle and Others v. Sri Vinayaga Agencies (2021) 84 GSTR 83 (Mad)****.*

2.3 *For the period from 29.01.2016, Section 19(1) of the TNVAT Act mandates that ITC shall be taken by registered purchasing dealer on tax paid under the Act subject to the conditions that (i) selling dealer has paid the same to the Government and (ii) the goods have actually been delivered.*

2.4 *It is not in dispute herein that the first condition is satisfied. The only ground on which the ITC is denied is on account of absence of proof for "physical movement of goods"from seller's premises to the Petitioner's. As against the same, in FOB contracts, it is submitted that the requirement under Section 19(1) is to be understood as to only establish these goods have actually been received. In other words, there cannot be any onus created to prove "movement of goods". Only delivery/receipt of the goods need to be proved. The phrase "been delivered" has been wrongly construed by the 1st Respondent to mean "movement of goods" alone.*

2.5 *By providing Goods Inward maintenance register along with other corroborating documents, the actual receipt of the goods has been established. These documents have also not been disputed by the*

*Department. Therefore, it is submitted that all the requirements under Section 19(1) of the TNVAT Act have been duly satisfied and ITC ought not to be denied.*

*3. It is settled position in law that ITC is a vested right and cannot be taken away without express provision of law. Reliance in this regard is placed on the decisions of* ***Eicher Motors Ltd. vs Union of India &Ors 1999 (106) E.L.T. 3 (S.C.)*** *and* ***CCE vs. Dai IchiKarkaria Limited1999 (112) E.L.T. 353 (S.C.)****. Therefore, when there is no onus cast on the buying dealer to establish physical movement of goods under Section 19(1) of the TNVAT Act, ITC cannot be denied*

*4. Without prejudice, the Amendment cannot be applied retrospectively.*

4.1 *It issubmitted that the Amendment to Section 19(1) of the TNVAT Act, being substantive in nature, cannot be interpreted to have retrospective operation as the Amendment does not explicitly provide for the same.*

4.2 *It is a settled law that unless the Statute expressly provides it, retrospective operation should not be given to a Statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. Reliance is placed on the decision of the Hon'ble Apex Court in the case of* ***Commissioner of Income Tax (Central) – I, New Delhi v. Vatika Township Private Limited [2015] 1 SCC 1****.*

4.3 *It is submitted that if the Amendment is given retrospective operation, it will mandate a fresh requirement on the buyer to establish the actual delivery of the goods. Such a fresh requirement, made for the first time, is very detrimental to buyers such as the Petitioner.*

4.4 *Therefore, the Amendment, if given retrospectivity effect, will be against the settled position of law. Reliance*

*is placed on the decision of the Hon'ble Supreme Court in the case of* ***Jayam & Co. v. Assistant Commissioner &Anr. 2016 (9) TMI 408 - Supreme Court.***

*5. For the balance disputed period between 29.01.2016 and 31.03.2016, provisions of Section 64(3) and Rule 15(3) with respect to movement of goods do not create any responsibility on the buyer, especially in case of FOB contracts.*

5.1 *During the course of arguments, it was advanced by the Ld. AAG that Section 64(3) of the TNVAT Act read with Rule 15(3) and Form MM create onus on the buying dealer to establish movement of goods from seller's premises to their premises. It is submitted that the same is erroneous for the following reasons.*

5.2 *The said provision provides for documents to be carried during transportation of goods. Further, the onus as per Section 64(3) and Rule 15(3) is on the selling dealer or the carrier of goods on whose responsibility the said movement occurs. The bare perusal of Form MM establishes the same.*

5.3 *It is submitted that, in case of FOB contracts, the buyer not being responsible for movement of goods from selling dealer's premises until the receipt of goods at factory gate of the buyer's, the said provisions are not applicable. That too, when the Statute does not create any liability on the Buyer to maintain records in respect of "movement of goods" in these scenarios.*

5.4 *The documents to be maintained by the purchasing dealer are contained in Rule 6 of the TNVAT Rules and it is not in dispute that the Petitioner is in due compliance with the same. Hence, ITC ought to be granted to the Petitioner.*

*6. In light of the above, it was prayed that the Writ*

*Petitions be allowed, and the Impugned orders be quashed in its entirety.*

26. The learned counsel for the respondent Commercial Tax in their Written Statement have stated as follows:-

***I. <u>The provisions of the TNVAT Act, 2006 under dispute</u>***

l ***<u>Comparative Statement Provision prior & after amendment</u>***

| ***Section / Rule*** | ***Prior to amendment*** | ***After amendment*** |
|---|---|---|
| *Section 19(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 :*<br><br>*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.*** | *There shall be i****nput tax credit of the amount of tax paid*** *under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule :*<br><br>*Provided that the registered dealer, who claims input tax credit,* ***shall establish that the tax due on purchase of goods has actually been paid in the manner prescribed*** *by the registered dealer who sold such goods and that the* ***goods have actually been delivered***<br><br>*Provided further that the* ***tax deferred under section 32 shall be deemed to have been paid*** *under this Act for the purpose of this sub-section* |
| *Rule 10(2)* | ***<u>Rule 10(2):-</u>*** *Every registered dealer* ***who claims input tax credit under sub-section (1) of section*** | *No Amendment / Change* |

| | | |
|---|---|---|
| | ***19 shall, produce the original tax invoice, in support of his claim of the input tax credit**, containing the following details, namely:-*<br>*(a) A consecutive serial number;*<br>*----- ---- ----- ----*<br>*(i) The total value of the goods.* | |
| *Rule 10(2A)* | *----------* | ***Rule 2-A:** Every registered dealer **who claims input tax credit to the extent of the tax paid on purchases of taxable goods specified in the First Schedule to the Act from the other registered dealers inside the State, shall establish, whenever it is deemed necessary by the assessing authority, that the tax due on such purchase of goods has actually been remitted into the Government account**.* |
| *Rule 10(2B)* | *----------* | *Rule (2-B) For the removal of doubts, it is hereby declared that, in no case, the amount of set-off or refund on any purchase of goods shall exceed the amount of tax in respect of the same goods, actually paid, if any, under the Act or any other Act referred to in section 88 of the Act, into the Government treasury except to the extent where purchase tax is payable by the claimant dealer on the purchase of the said goods effected by him;* |

*·The section 19(1) of the TNVAT Act, 2006 was amended vide Act No 13 of 2015, dated 14.10.2015 and the amendment takes effect from 29.01.2016*

*· The Rule 10(2A) & (2B) was inserted by G.O.Ms. No. 18*

*Dated 29.01.2016*

## *II.PRINCIPAL ARGUMENT OF THE PETITIONERS*

*The Section 19 (1) was amended by Act No 13 of 2015 with effect from 29.01.2016 with following consequences:*

- *The eligibility of Input Tax Credit (ITC) was restricted to the extent of tax paid.*
- *The substituted proviso read newly introduced Rule 10(2A) of the TNVAT Rules, 2007 prescribes the Proof of taxes having been paid actually ought to be established, whenever it is deemed necessary.*
- *Further the substituted proviso states that the goods sold have actually been delivered.*

*The thrust of the petitioners arguments in these writ petitions were that the proof for delivery or proving the movement goods prior to 29.01.2016 is without jurisdiction.*

*Thus, Production of original tax Invoices is conclusive evidences for the claim of ITC as per the provision prior to the amendment. No further enquiry can be made in order find the eligibility of the claim ITC.*

## *III. SUBMISSION OF THE RESPONDENT*

### *1. Objects and Reasons for the insertion of the Proviso*

*l. The LA Bill No 8 of 2015 - Tamil Nadu Value Added Tax (Second Amendment) Act, 2015 States the following as Statement of objects and reasons behind the substitution of the proviso to section 19(2) of the TNVAT Act, 2006.*

*(d) Allowing input tax credit only to the extend of the tax paid to the exchequer by a registered dealer to another*

*registered dealer on the purchase of goods including capital goods in the course of his business, only when such tax has actually been paid by the registered dealer who sold such goods,* ***so as to curb under claims towards input tax credit resulting in tax evasion****;*

***2. <u>The general facts of the case in all these writ petitions</u>.***

*a) The place of business was inspected by the enforcement wing on suspicious bill trading activities;*
*b) Business was carried on in a large scale without proper infrastructure and even no godown for storing the goods in many cases ;*
*c) No stock or very minimum stock was available at the time of inspection;*
*d) The sellers were not non-existent or related parties;*
*e) In some cases, the buyer and seller are located in the same premises;*
*f) No proper records were not maintained for the transfer of goods in pursuance to the sale;*
*g) No transport document and incidental charges connected with the purchase and sales of goods were maintained;*
*h) The transaction with minimum value addition and the entire discharge of output tax was by of ITC and only marginal amount of tax was paid.*
*i) In the above background the Assessing Authority has questioned the genuineness of the transactions (or) the existence of buyers/sellers and more importantly involvement of goods and in turn has called/sought for furnishing documents relating to movement/delivery of goods.*

***3. <u>Whether the delivery of goods / actual passing of title of goods is essential attribute of sale?</u>***

- ***The section 2(33)*** *of the TNVAT Act, 2006 defines "****sale"*** *with all its grammatical variations and cognate expressions* ***means every transfer of the property in goods*** *(other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of business for cash, deferred payment or other valuable consideration and includes ,-*

- ***The section 31*** *of the sale of Goods Act, 1930 states that it is the* ***duty of the seller to deliver the goods and of the buyer to accept and pay for them,*** *in accordance with the terms of the contract of sale.* ***The Section 32*** *of the sale of Goods Act, 1930 states that* ***unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions****, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.*

- *The sale simpliciter means transfer of the property in goods from one person to another. Therefore the delivery of goods is an essential attribute of sale/purchase. Thus, irrespective of the Amendment Act 13 of 2015, delivery of goods pursuant to a contract of sale is essential.*

Decision relied on

- ***The Apex Court in the case of Poppatlal Shah – 4 STC 188 – has held that***

> *"The expression "sale of goods" is a composite expression consisting of various ingredients or*

*elements. Thus, there are the elements of a bargain or contract of sale, the payment or promise of payment of price, the delivery of goods and the actual passing of title, and each one of them is essential to a transaction of sale though the sale is not completed or concluded"*

- ***The Apex Court in the case of BSNL Vs UOI – 2006 (3) SCC 1 – has held that***

"*The Sale of Goods Act 1930 comprehends two elements, one is a sale and other is delivery of goods."*

***4. <u>The ITC is a concession granted by Statute and can be availed as per conditions</u>***

- ***The Apex Court in the case of Jayam & Co Vs Assistant Commissioner - [2016] 15 SCC 125has held at para 11 & 12.***

" *11.From the aforesaid scheme of Section 19 following significant aspects emerge:*

*(a) ITC is a form of concession provided by the legislature. It is not admissible to all kinds of sales and certain specified sales are specifically excluded.*
*(b) Concession of ITC is available on certain conditions mentioned in this section.*
*(c) One of the most important condition is that in order to enable the dealer to claim ITC it has to produce original tax invoice, completed in all respect, evidencing the amount of input tax.*

*12.It is a trite law that whenever concession is given by statute or notification, etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the "dealers" to get the benefit of ITC but it is a concession granted by virtue of Section 19".*

***5.Whether the substituted proviso to section 19(2), which provides actual delivery of goods is prospective or retrospective?***

- *Even prior to the amendment, the duty cast on the petitioner is prove to the transaction of sale is real for the entitlement of ITC. The assessing authority is empowered to make such enquiry in the case transaction of bill trading to defraud revenue as per section 19(13) of the TNVAT Act, 2006 read with section 65 & 81 of the TNVAT Act, 2006.*

- *Such enquiry in case of bill trading empower the authority to look beyond the production of original bill and to call for proof delivery of goods.*
- *When such being the position the amendment brought in explicitly providing the condition of actual delivery of goods, by way of removal doubts that the mere production invoice/ bill would not be suffice to prove the transaction which are not real sales. Thusamendment is only declaratory / clarificatory and takes retrospective effect.*
- *The LA Bill No 8 of 2015 specifies the object and reason to curb undue claim of ITC resulting in tax evasion.*

Decision relied on:

·***The Apex Court in the case of Commissioner of IT vs-Vatika Township P Ltd - [2015] 1 SCC 1 — held at Para 32***

*" **32.**Let us sharpen the discussion a little more. We may*

*note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labelled as "declaratory statutes". The circumstances under which provisions can be termed as "declaratory statutes" are explained by Justice G.P. Singh [Principles of Statutory Interpretation, (13th Edn., LexisNexis Butterworths Wadhwa, Nagpur, 2012)] in the following manner:*

*"Declaratory statutes*
*The presumption against retrospective operation is not applicable to declaratory statutes. As stated in* CRAIES *[ W.F. Craies, Craies on Statute Law (7th Edn., Sweet and Maxwell Ltd., 1971)] and approved by the Supreme Court [**Ed.**: The reference is to Central Bank of India v. Workmen, AIR 1960 SC 12, para 29] : 'For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word "declared" as well as the word "enacted".' But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is*

*declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law."*

*The above summing up is factually based on the judgments of this Court as well as English decisions."*

- ***The Apex Court in Allied Motors P Ltd Vs Commissioner of IT-in [1997] 3 SCC 472 – held at Para -13***

***13.*** *"A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole."*

· ***Commissioner of IT – Vs Gold coin Health Food P Ltd - [ 2008] 9 SCC 622 — held at Para – 8***

" ***8.*** *The court has toanalyse the nature of the amendment to come to a conclusion whether it is in reality a clarificatory or declaratory provision. Therefore, the date from which the amendment is made operative does not conclusively decide the question. The court has to examine the scheme of the statute prior to the amendment and subsequent to*

*the amendment to determine whether amendment is clarificatory or substantive".*

· ***The Apex Court in the case of Zile Singh Vs State of Haryana - .[2004] 8 SCC 1 – held at Para 15***

" ***15.****Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)"*

***6. The scope of proviso***

· ***The Apex Court has explained the scope of proviso as below in the case S.Sundaram Pillai & others vs- V R Pattabiraman& others- [1985] 1 SCC 591– Para 43***

"*43.We need not multiply authorities after authorities on this point because the legal position*

*seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:*

*(1) qualifying or excepting certain provisions from the main enactment:*
*(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:*
*(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and*
*(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."*

*7. **Whether the substantive right of the petitioners affected ?***

- *The Section 64(1) of the TNVAT Act, 2006 states that every person registered under this Act, **shall keep and maintain an up-to-date, true and correct account showing full and complete particulars of his business***

- *The section 64(3) of the TNVAT Act, 2006 states that e**very registered dealer or person who moves goods in pursuance of a sale or purchase** or otherwise from one place to another shall send along with the goods moved a bill of sale or delivery note or such other documents, as may be prescribed.*

- *The Rule 6 (1) of the TNVAT Rules, 2007 states that every registered dealer under the Act **shall maintain true, correct and complete account** in*

*ink or electronic records in any of the languages specified in the Eighth Schedule to the Constitution of India or in English showing* ***the goods produced or manufactured, bought, sold, delivered or supplied****.*

- *The Rule 6 (11) of the TNVAT Rules, 2007 states that theaccounts maintained by a registered dealer* ***shall be preserved by him for a period of [six]* years from the date of assessment****. *Substituted "Six" for the word 'five' by G.O.Ms.No.83 dated 18th June 2012, effective from 19th June 2012.*

- ***The Rule 15 (3) of the TNVAT states that f****or purposes of sub-section (3) of section 64 and sub-section (5) of section 67, the following shall be the documents to be sent along with the goods, namely:-*

(a) A bill of sale or a delivery note in **Form JJ and a goods vehicle record or trip sheet or log book;**

*· In view of the above provision, the petitioners are bound to maintain complete records pertaining to his business. The claim of ITC is only provisional as per section 19(16) of the TNVAT Act, 2006 and further the ITC is concession granted by the statute, which can be availed on fulfilling the conditions and subject to verification of the records wherever necessary. The requirement of proving the transactions as real and mere bill trading is responsibility cast of the petitioner for claim of ITC. The petitioners are supposed to maintain the records and preserve them for the period mentioned as per provision of the Act. Therefore substantive right of petitioner were not taken away or endangered.*

***8.<u>Can the decision of DB in the case VinayagaAgensies</u>***

***in WA No 4292 of 2019 dated 04.03.2020 is a direct proposition on the issue on hand?***

*· In this case, the factum of sale is not questioned and ITC was disallowed for only reason that seller has not paid the tax collected by him. In these circumstances, the Hon'ble Division Bench has held that ITC claimed by the buyer cannot be reversed. At Para 8 the Hon'ble Division Bench held as follows:*

> *" In the present case, for non-deposit of due tax collected form the purchasing dealer M/s.Vinayaga Agencies, the Revenue is therefore free to hold enquiry against the selling dealer and collect the Revenue from the 6/8 http://www.judis.nic.in W.A.No.4292 of 2019 & CMP.No.26910 of 2019 selling dealer, which money in the hands of selling dealer, is held in trust for the State by the selling dealer. It is not the case of the Revenue before us that the selling dealer in the present case is a non-existent or a ghost dealer. The identity and registration of the selling dealer and the fact that he collected the tax from the purchasing dealer in question are duly proved on record and are not disputed"*

- *The Division Bench in the case of Vinayaga Agencies has not considered the scope of proviso in regard " **goods have actually been delivered".***

- *In all these cases, the very factum of sale is questioned. The transactions and the invoices are treated as bogus and make believe for a variety of reasons ranging from non-existent dealers, transaction between same set of dealers, no goods was supplied, etc. Therefore the decision rendered in Vinayaga Agencies case will not squarely apply to the facts of these writ petitions.*

***9. <u>Whether the production of tax invoice would amount sufficient discharge of burden for the claim of ITC?</u>***

- *The section 2(24) of the TNVAT Act, 2006 defines* ***ITC means*** *the* ***tax paid*** *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;***

- *The section 19(13) of the TNVAT Act, 2006 states that the assessing authority shall,* ***after making such enquiry deny the benefit of input tax credit to such registered dealer who without entering into a transaction of sale, issues an invoice, bill or cash memorandum to another registered dealer, with the intention to defraud the Government revenue****.*

*The entitlement of ITC is dependent on the actual sale of goods. Thus in order to prove that the transactions in question are real transaction of sale and not mere issue of invoice / bill to defraud revenue, the production of original tax invoice would not be sufficient discharge of burden cast on them in lieu of section 19(13) of the TNVAT Act, 2006.*

Decision relied on

- ***The Apex Court in the case of ALD Automotive (P) Ltd. v. CTO, (2019) 13 SCC 225 has held at Para 20, 23,24 as below***

" ***20.****Another principle of statutory interpretation which needs to be noticed is that a provision in the statute is not to be read in isolation rather it has to be read along with other related provisions itself, more particularly when the subject-matter dealt with in different sections or parts of the same statute is the same. This proposition was reiterated by this Court in Kailash Chandra v. Mukundi Lal [Kailash Chandra v. Mukundi Lal, (2002) 2 SCC 678] . In para 11, the following has been laid down: (SCC p. 683)*

"*11.A provision in the statute is not to be read in isolation. It has to be read with other related provisions in the Act itself, more particularly, when the subject-matter dealt with in different sections or parts of the same statute is the same or similar in nature."*

***23.*** *The section 3 sub-section (3) provided that tax payable under sub-section (2) by registered dealer shall be reduced, in the manner prescribed, to the extent of tax paid on his purchase of goods specified in Part B and Part C of the First Schedule inside the State, who is the registered dealer who sold the goods to him. The provision of Section 3 sub-section (3) is a provision which entitled a registered dealer to obtain a tax credit which has been explained in Section 19. The submission that Section 19 is inconsistent to Section 3(3) is wholly misconceived. What is envisaged in Section 3 sub-section (3) is amplified and explained in Section 19. The reduction in the tax as contemplated in Section 3 sub-section (3) has to be in the manner and as provided in Section 19. Section 19(11) contains a condition for claiming the input tax credit. As noticed above, there are other various provisions in Section 19 itself where it contains provisions where no input tax credit is allowable e.g. Section 19(6) to Section 19(10)*

***24.*** *When the input tax credit is to be allowed and when it is to be disallowed is elaborated in Section 19 which is a*

*self-contained scheme and benefit under Section 3 sub-section (3) can be claimed only when conditions as enumerated in Section 19 are fulfilled.*

· ***The DB of Madras High Court in the case of Rattan Steel V The State of Tamil Nadu [2013 SCC Online Mad 1873] has held at Para 5***

> *" Even though learned counsel for the assessee pointed out that the cancellation of registration was only on 19.11.1993 and hence, exemption could be allowed in respect of sales taken place prior to the date as taken from the registered dealer, we do not find any ground to accept this reasoning. When the said dealer has not proved the genuineness of the transactions, and there being no material to substantiate the contention of the assessee that the said Raghavendra Enterprises had in fact handled the goods, even for the period prior to the date of cancellation of registration, we do not find any ground to differ from the view taken by the Tribunal."*

- ***The DB of Gujarat High court in the case of Madhav Steel Corporation vs State of Gujarat – [2014] 72 VST 318 - (Pl refer Para No 6***

> *"6. Considering the aforesaid facts and circumstances of the case and when the appellants/dealers have failed to satisfy/prove the actual physical movement of the goods alleged to have been purchased by them from the aforesaid two vendors on which the input-tax credit have been claimed and when the sale transactions are found to be not genuine and it appears that there were only billing activities, we are of the opinion that no error has been committed by the assessing officer as well*

*as learned Tribunal in denying the input-tax credit. Under the circumstances, as such the proposed substantial questions of law referred to herein above are answered against the appellants/dealers and in favour of the Revenue."*

- ***The DB of AP High Court in the case of Dwaraka Pershad Badari Pershad vs State of AP – [ 1992] 87 STC 177 has held as follows***

" *A perusal of the order of the Tribunal in regard to the said seven dealers, shows that they were all fictitious dealers whose addresses and names did not exist. However, Sri Srinivasa Reddi contends that the dealers had registered their names with the department and they shall be deemed to be genuine dealers. We are unable to accept the same. If the petitioner is claiming exemption it is for him to show that he had purchased pulses from dealers who are in existence. Registration of certain names as dealers with the department would not ipso facto entitle the petitioner to the exemption if the said dealers are found to be fictitious and non existing"*

***10. Whether it is permissible for the authority to call for proof of movement of goods?***

- ***The section 19(13)*** *of TNVAT Act, 2006 authorises the authority for* ***making such enquiry in such cases, the claim of ITC by issuing mere invoice without entering into a transaction of sale, with the intention to defraud the Government revenue***
- ***The Section 65*** *of TNVAT Act, 2006 grants power to any officer prescribed by the Government, for the purposes of this Act, require any dealer to*

*produce before him the accounts, registers, records and other documents, and* ***to furnish any other information relating to his business***

- ***The section 81*** *of TNVAT Act, 2006 empowers the an assessing authority not below the rank of an Deputy Commercial Tax Officer shall, for the purposes of this Act, have all the powers conferred on a court by the Code of Civil Procedure, 1908 (Central Act V of 1908), for the purpose of -*

(a) summoning and enforcing the attendance of any person and examining him on oath or affirmation; and (b) compelling the production of any document.

- *By virtue of the above provisions, the assessing authority is empowered to call for production of any documents or any other information relating to the business, which certain includes the records such as transport of the goods, delivery of goods, payments incurred incidental to such movement / delivery of goods, etc. The assessing authority is empowered to make such enquiry beyond the original Tax invoice, regarding delivery of goods as provided under section in order to ensure that the transaction of sale is real.*

- *The need for calling for a movement of goods arises only to ensure that there was delivery of goods. It may be relevant to submit that the movement of goods is the most proximate fact relating to delivery of goods and is inextricably linked to delivery. Thus, proof of movement of goods is relevant to find delivery of goods or otherwise.*

## *11. <u>The Burden of proof in regard to claim of ITC</u>*

*The Section 17 (2) of the TNVAT Act, 2006 states that for*

*the purpose* ***of claim of input tax credit, the burden of proving such claim shall lie on such dealer.***

27. We have considered the arguments advanced on behalf of the learned counsel for the petitioners and appellants and the learned counsel for the respondent.

28. Section 19 of the TN VAT Act,2006 is the substantial provision for grant of input tax credit to a registered dealer on the incidence of tax borne in the tax invoice. Input tax credit is to be availed on the strength of original copy of the invoice as per Section 19(10)(a) of the TN VAT Act, 20006 read with Rule 10 of the TN VAT Rules, 2007.

29. Section 19(1) of the TN VAT Act, 2006, was amended with effect from 29.01.2016 vide Second Amendment Act (13 of 2015) 2015 with effect from 29.01.2016. Denial of input tax credit availed and utilized in these cases pertains to the period prior to the above amendment to Section 19 of the TN VAT Act, 2006 with effect from 29.01.2016, except in W.P No.11489 of 2019 (one of the Writ Petitions filed by **Tvl.Atmosfaira Impex Pvt. Ltd.**). Rest of the cases of all the petitioner/appellants are governed by the proviso to Section 19(1) of the

TN VAT Act, 2006, as it stood prior to the amendment with effect from 29.01.2016.

30. Prior to amendment to Section 19(1) of the TN VAT Act, 2006, read slightly different from how it reads after the said amendment vide Second Amendment Act (13 of 2015) 2015 with effect from 29.01.2016. For a proper perspective, Section 19(1) of the TN VAT Act, 2006 as it read prior to 29.01.2016 and after 29.01.2016 are reproduced as under:-

**TABLE-A**

| **Section 19 (prior to amendment)** | **Section 19 (w.e.f. 29.01.2016)** |
|---|---|
| 19(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:<br><br>*Provided that the registered dealer, who claims input tax credit,* ***shall establish that the tax due on such purchase has been paid by him in the manner prescribed*** | 19(1): There shall be **input tax credit** of the amount of tax **paid** under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule:<br><br>*Provided that the registered dealer, who claims input tax credit, shall establish* ***that the tax due on purchase of goods has actually been paid in the manner prescribed by the registered dealer who sold such goods and that the goods have actually been delivered.***<br><br>*Provided further that the tax deferred under Section 32 shall be deemed to have been paid under this Act for the* |

*purpose of this sub-section.*

31. The amendment to Section 19(1) of the TN VAT Act, 2006 vide Second Amendment Act (13 of 2015) with effect from 29.01.2016 led to a corresponding insertion of Rule 10(2-A) to TN VAT Rules, 2007. Rule 10(2-A) of the TN VAT Rules, 2007 reads as under:-

> *10. Input tax credit .—*
>
> *(1).....*
>
> *(2) .....*
>
> (2-A) *Every registered dealer who claims input tax credit to the extent of the tax paid on purchases of taxable goods specified in the First Schedule to the Act from the other registered dealers inside the State**, shall establish, whenever it is deemed necessary by the assessing authority, that the tax due on such purchase of goods has actually been remitted into the Government account.***

32. Under Rule 10(2-A) to TN VAT Rules, 2007 after the amendment, a registered dealer who claims ITC has to establish that the tax on purchase of goods has actually been paid in the manner prescribed by the registered dealer who sold the goods and that the goods have actually been delivered. Prior to the amendment, credit was available on

the tax paid or payable under the Act. This amendment is in tune with the manner in which the scheme for grant of input tax credit was to be allowed.

33. To give effect to the above, amendment, recovery mechanism under Section 27(4) of the TN VAT Act, 2006 was further strengthened by the same amendment Act. Section 27 (2) and Section 27(4) of the TN VAT Act, 2006 as it read before and after amendment are extracted as under:-

**TABLE -B**

<table>
<tr><th colspan="2">27 (2) of TNVAT Act, 2006</th></tr>
<tr><td colspan="2">27(2)Where, for any reason, the input tax credit has been availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the assessing authority shall, at any time, within a period of six years from the date of assessment, reverse input tax credit availed and determine the tax due after making such a enquiry, as it may consider necessary:<br><br>Provided that no order shall be passed under sub-sections (1) and (2) without giving the dealer a reasonable opportunity to show cause against such order.</td></tr>
<tr><th>Section 27 (4) prior to amendment</th><th>27(4) of TNVAT Act, 2006 after amendment</th></tr>
<tr><td>In addition to the tax determined under sub-section(2),the assessing authority shall direct the dealer to pay as penalty a sum:</td><td>In addition to the tax determined under sub-section (2), the assessing authority shall direct the dealer to pay as penalty a</td></tr>
</table>

| ***27 (2) of TNVAT Act, 2006*** | |
|---|---|
| *(which shall be in the case of first such detection **fifty percent of the tax** due in respect of such claim; and*<br><br>*(ii) which shall be in the case of second or subsequent detections, **one hundred percent of the tax due** in respect of such claim.* | *sum which shall be **three hundred percent** of the tax due in respect of such claim.* |
| *Provided that no penalty shall be levied without giving the dealer a reasonable opportunity of showing cause against such imposition.* | |

34. Section 19 of the TN VAT Act, 2006 is inspired from Rule 4(7) of the CENVAT Credit Rules, 2004. Both the proviso to Section 19(1) of the TN VAT Act, 2006 before the amendment and after the amendment are somewhat similar to Rule 4(7) of the CENVAT Credit Rules, 2004.

35. As per Rule 4(7) of the CENVAT Credit Rules, 2004, CENVAT Credit in respect of input service shall be allowed, on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in Rule 9.

36. At the time of inception, Rule 4(7) of the CENVAT Credit Rules, 2004 reads as under:-

> ***4. Conditions for allowing CENVAT credit.-***
> *(1) …….*
> *……..*
> *(7) The CENVAT credit in respect of input service shall be allowed, on or after the day which payment is made of the value of input service and the service tax paid or payable as is indicated in invoice, bill or, as the case may be, challan referred to in rule 9.*
>
> *PROVIDED that in respect of input service where whole or part of the service tax is liable to be paid by the recipient of service, credit of service tax payable by the service recipient shall be allowed* ***after such service tax is paid***

37. The provisions of CENVAT Credit Rules, 2004 which replaced the CENVAT Credit Rules, 2002 were drafted with a lot of caution and care after having gained a rich experience since the introduction of Proforma Credit under the provision of the Central Excise Rules, 1944 and under the Modvat Credit Rules under the provision of the Central Excise Rules, 1944.

38. Several provisos to Rule 4(7) of CENVAT Credit Rules, 2004 were later periodically inserted over a period of time to ensure that there was no leakage of revenue on account of input tax credit facility being

extended. After the insertion of provisos, Rule 4(7) of CENVAT Credit Rules, 2004 reads as under:-

> *4. Conditions for allowing CENVAT Credit.*
> *(1)…….*
> *……….*
> *(7)* ***The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received****:*
>
> ***PROVIDED that in respect of input service where whole or part of the service tax is liable to be paid by the recipient of service, credit of service tax payable by the service recipient shall be allowed after such service tax is paid****:*
>
> *PROVIDED FURTHER that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9 is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service, except an amount equal to the CENVAT credit of the tax that is paid by the manufacturer or the service provider as recipient of service, and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules:*
>
> *PROVIDED ALSO that in respect of services provided or agreed to be provided by a person*

*located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India where service tax is paid by the manufacturer or the provider of output service being importer of goods, as the person liable for paying service tax for the said taxable services, credit of service tax paid by the person liable for paying service tax shall be allowed after such service tax is paid:*

*PROVIDED ALSO that if any payment or part thereof, made towards an input service is refunded or a credit note is received by the manufacturer or the service provider who has taken credit on such input service, he shall pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited:*

*PROVIDED ALSO that CENVAT credit in respect of an invoice, bill or, as the case may be, challan referred to in rule 9, issued before the 1st day of April, 2011 shall be allowed, on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9:*

*PROVIDED ALSO that the manufacturer or the provider of output service shall not take CENVAT credit after one year of the date of issue of any of the documents specified in sub-rule (1) of rule 9, except in case of services provided by Government, local authority or any other person, by way of assignment of right to use any natural resource:*

*PROVIDED ALSO that CENVAT Credit of Service Tax paid in a financial year, on the one-time charges payable in full upfront or in instalments, for the*

*service of assignment of the right to use any natural resource by the Government, local authority or any other person, shall be spread evenly over a period of three years:*

*PROVIDED ALSO that where the manufacturer of goods or provider of output service, as the case may be, further assigns such right assigned to him by the Government or any other person, in any financial year, to another person against consideration, such amount of balance CENVAT credit as does not exceed the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year:*

*PROVIDED ALSO that unavailed CENVAT Credit in respect of services provided by the Government, local authority or any other person by way of assignment of the right to use any natural resources on the day immediately preceding the appointed day may be availed of in full on that very day.*

***Explanation I**:The amount mentioned in this Rule, unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5$^{th}$ day of the following month except for the month of March, when such payment shall be made on or before the 31$^{st}$ day of the month of March.*

***Explanation II**: If the manufacturer of goods or the provider of output service fails to pay the amount payable under this rule, it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.*

***Explanation III**:In case of a manufacturer who*

*avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, "following month" and "month of March" occurring in sub-rule (7) shall be read respectively as "following quarter" and "quarter ending with the month of March".*

***Explanation IV**:"unavailed CENVAT Credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of any service from the aggregate amount of CENVAT credit to which the recipient of such service was entitled to in respect of such service.*

***Explanation V**: "appointed day" means the date on which the provisions of the Central Goods and Service Tax Act, 2017 (12 of 2017) shall come into force.*

39. Modvat Credit allowed a manufacturer to avail input tax credit on the excise duty paid and on the additional duty of customs paid on the import equivalent to the excise duty paid on the like goods manufactured in India for being availed as credit and utilized at the time of removal of goods for payment of excise duty under Section 3 of the Central Excise Act, 1994.

40. In 2004, there was further liberalization. Not only input tax credit on inputs but also on input services as input tax credit were

allowed for being utilized for discharging not only the duty liability under the Section 3 of the Central Excise Act, 1944 and also service tax liability under the provisions of the Finance Act, 1994 on the service provided.

41. Though, Section 19 of the TN VAT Act, 2007 was inspired from the first proviso to Rule 4(7) of the CENVAT Credit Rules, 2004, Section 19 of the TN VAT Act, 2007 was not drafted properly, when TN VAT Act, 2006 was enacted in the year 2006. As per Section 19(1) of the TN VAT, 2016 and Rule 10 of TN VAT Rule, 2007 input tax credit could be availed on the strength of the original invoice alone.

42. However, under the proviso as it stood prior to amendment, a registered dealer who intended to claim input tax credit had to establish that tax due on such purchase was "**paid by him**" in the manner prescribed. During the period prior to the amendment, the Rule 10 of the TN VAT Rules.2007, also did not prescribe the manner for establishing how the tax due on such purchases was to be paid by such a dealer like the petitioners/appellants purchasing goods who availed input tax credit

on the incidence of tax borne on the purchase made by them.

43. There was a legal impossibility in the proviso to Section 19(1) of the TN VAT Act, 2006 as tax is not paid by the buyer. The buyer would pay tax only when "purchase tax" was payable under Section 12 of the TN VAT Act, 2006. Thus, there was a defect in the proviso to Section 19(1) of the TN VAT Act, 2006. Proviso to Section 19(1) of the TN VAT Act, 2006 was incapable of being complied by the petitioners/appellants when they availed credit.

44. The draftsmen while drafting proviso to Section 19(1) TN VAT Act, 2006 failed to capitalize and borrow the wisdom from the rich experience gained by their counter parts from the Central Excise Department who had successfully implemented Proforma Credit/ Modvat/ CENVAT Credit under the provisions of the erstwhile Central Excise Rules, 1944 and later under the CENVAT Credit Rules, 2004.

45. The draftsmen while drafting Section 19(1) of the TN VAT Act, 2006 failed to fundamentally take note of the fact that TN VAT Act, 2006 is an indirect tax and tax is paid by the dealer who effects sale at the

month end at the time of filing monthly returns and tax is not by the recipient or the purchaser of the goods on reverse charge basis unless "purchase tax" was payable by the purchaser under Section 12 of the TN VAT Act, 2006.

46. Like in the case of all indirect taxes, as dealers registered under the provisions of TN VAT Act, 2006, the petitioners/appellants would have merely borne the incidence of tax paid/ payable by the dealer who effected such sale to them on purchase made by them. It is the registered dealer who sold the goods to them who was liable to pay tax under the scheme of TN VAT Act, 2006. Likewise, the petitioners/appellants, while effecting further sale would have charged tax on their buyers in their tax invoice on the value addition made by them on the goods and would have only passed on the incidence of tax "payable" or "paid" by them to their customers/buyers.

47. The responsibility to pay tax (VAT) was on the registered dealer who effects sale within State under the scheme of TN VAT Act, 2006. This crucial aspect which is so fundamental to any indirect tax was missed out by the draftsmen who drafted proviso to Section 19(1) of the

TN VAT Act, 2006.

48. Proviso to Section 19(1) of the TN VAT Act, 2006 as it stood with effect from 1.1.2007, the day on which it came into force thus had a congenital defect from the time of its birth. The defect continued till the defect was removed in 2016. Strictly, this defect disabled a dealer to avail input tax credit on the incidence of tax borne on the purchase unless tax was paid under Section 12 of the TN VAT Act, 2006.

49. The situation contemplated in the proviso to Section 19(1) of the TN VAT Act, 2006 as extracted in the Column - 1 to **Table A** was thus impossible of being complied by registered dealers like the petitioners/appellants to avail input tax credit though the very purpose of enacting TN VAT Act, 2006 was to allow input tax credit to a registered dealer on the incidence of tax borne on each purchase by such dealer who intends to either effect further sale and use the goods in the manufacture of some other taxable goods.

50. Proviso to Section 19(1) of the TN VAT Act, 2006 was rectified only in 2016 vide Second Amendment Act (13 of 2015) with effect from

29.01.2016 after realizing that the proviso to Section 19(1) of the TN VAT Act, 2006 as was not precise due to defective drafting and allowed input tax credit facility being misused and abused by unscrupulous dealers leading to a large scale leakage of revenue in the past. Thus, it made it mandatory for a dealer intending to avail input tax credit to establish that was paid by the dealer who effected sale before availing input tax credit. Either way, availing of input tax credit was contingent on the tax being paid by the dealer effecting sale.

51. Likewise, Rule 10(2-A) to Rule 10 of the TN VAT Rules, 2007 was inserted to quell further leakage of revenue. Section 27(4) was further strengthened to impose higher penalty where credit was wrongly availed and utilized.

52. The provisions of TN VAT Act, 2006 were more evolved than CENVAT Credit Rules, 2004, from which it is inspired, as TN VAT Act, 2006 contemplated recovery of input tax credit under the following circumstances:-

*a) when credit was wrongly availed; or*
*b) where any dealer produces false bills,*

*vouchers, declaration certificate or any other documents to avail input tax credit [Section 19(13)]; or*

c) *where the registration of the dealer who sold the goods was cancelled retrospectively [Section 19(15)],*

53. Yet, the manner in which the proviso to Section 19(1) of the TN VAT Act, 2006 was drafted, allowed leakage of revenue in the form of credit being passed on the without a transaction of sale.

54. Although, there was a defect in the manner in which proviso to Section 19(1) of the TN VAT Act, 2006 was drafted, it should be borne in mind that the TN VAT, Act, 2006 was enacted like every other VAT enactment to levy and collect tax at each stage of sale on the value addition by allowing input tax credit on the incidence of tax borne at each stage of purchase for being set-off. It was intended to reduce the outflow of cash from the hands of the purchaser dealer while effecting subsequent sale.

55. It is also not our intention to deny credit although a strict reading of Section 19(1) of TN VAT Act, 2006 and Rule 10 of TN VAT Rules, 2007, as it stood prior to the amendment would not have allowed

them to avail input tax credit in the manner in which proviso was drafted. There is also no doubt in our mind that the petitioners/appellants were indeed entitled to input tax credit on the incidence of tax borne by them, provided the transactions were bonafide and legitimate and there was a transaction of "sale" and not a mere paper transaction of sale without movement of goods.

56. There has to be delivery of possession of the goods. There should be proof of such delivery of possession either the dealer purchasing the goods or to the consignee. Mere paper transaction coupled with rotation of money through banking channel to a so called supplier/seller is not sufficient to establish that the credit was validly availed, if the seller has disappeared or was a dummy and a fly by night dealer whose endeavour for obtaining registration was merely to facilitate fraudulent availing of input tax credit to defraud the State Revenue. The credit availed which is provisional can therefore can be denied under the scheme of the Act.

57. As long as, transaction are bonafide and there are documents to

establish sale coupled with actual physical movement of goods and payment of consideration to the dealer who effecting sale, input tax credit cannot be denied to the dealer who produces documents to show that the goods were delivered to it or to its consignee.

58. At the same time we make it clear, the law also does not require unnecessary crisscross movements of the goods to avail input tax credit validly. It is not necessary that the goods should be delivered to person who has placed order. Goods can also be delivered to a consignee identified by the buyer/registered dealer. Sine qua non for availing input tax credit is a transaction of sale ie., couple with a movement of goods from the seller to the buyer or to a consignee directly named in the invoice at instance of the dealer who placed such purchase order only in absence of such proof, input tax credit can be denied under the machinery provided under the Act.

59. Input tax credit was a substantive right conferred on bonafide transaction of sale under Section 19(1) of the TN VAT Act, 2006 although with a defective drafting.

60. Input tax credit was a form of a cash incentive. The tax borne on the purchase was given in the form of credit to be set off on the sale. Input tax credit was intended to reduce the outflow of cash to the exchequer to a dealer while effecting sale by allowing debiting the amount availed as input tax credit in the books of account.

61. The Courts, registered dealers under the TN VAT Act, 2006, as also the Tax Administration in the State, have also understood that input tax credit was to be allowed on the incidence of tax borne by the such registered dealers such as the respective petitioner/appellants on purchase made by them for being set-off against their liability tax on further sales made by them.

62. Like the CENVAT Credit under the provisions of the CENVAT Credit Rules, 2004 (formerly under Modvat Credit Scheme under the Central Excise Rules, 1944), input tax credit was made available without there being any one to one co-relation with between the purchase and the sale.

63. This is and was the philosophy behind all the value added tax

enactment. TN VAT Act, 2006 is no exception to the above philosophy. Input Tax Credit under the Modvat Credit Scheme was indented to reduce the cascading effect of the tax, although it has been euphemistically stated by few Courts that it was intended to reduce the cascading effect of the tax for the benefit of ultimate consumer.

64. In a free economy, where demand and supply determine the price and the price is charged on the value addition, there is hardly any scope to draw an inference that the input credit system was intended to benefit the consumers. Rather, it allowed the dealer and manufacturers to restrict the cash outflow at the time of payment of tax at the time specified in the Rules to the State Exchequer.

65. Suffice to state the petitioner/appellants were entitled to avail input tax credit on the incidence of tax borne by them on the purchase made for being utilized and being debited against their tax ultimate liability in their monthly/annual returns as the case may be on further sale of goods effected by them to their consumers as long as the credit availed by them preceded a transaction of “sale” and incidence of tax was borne by them by making payments to their seller.

66. It is also the cases of the respective petitioner/appellants, they have indeed borne the incidence of tax as their transaction were through normal banking channel. However, it is submitted that they were not required to prove actual delivery of goods. This argument and the stand of the petitioners/appellants is unacceptable.

67. Under the scheme of the TN VAT Act, 2006, the credit that is availed on the strength of the original invoice containing the details specified in Rule 10(2) of the TN VAT Rules, 2007 is provisional. Such input tax credit can be denied to a dealer, if the dealer fails to discharge the burden of proof as under Section 17(2) of the Act.

68. As long as credit was availed validly where there is not only a transaction of "sale" as defined in the Act but also incidence of tax being borne, input tax credit was to be allowed to be utilized as a set-off against the tax liability declared in the self assessment in the monthly/annual return under the Scheme of the Act. If tax is not paid by the seller, machinery is prescribed to recover the tax from such dealer.

69. The Hon'ble Supreme Court in C**CE** Vs. **Dai Ichi Karkaria Ltd.,** (1999) 7 SCC 448, 1999 (112) ELT 353 has explained the above concept elegantly in the context of Modvat Credit under Central Excise Rules, 1944.The decision of the Hon'ble Supreme Court in C**CE** Vs. **Dai Ichi Karkaria Ltd.,** (1999) 7 SCC 448 is relevant even in the context of TN VAT Act, 2006. In fact, it will remain contemporary for all time to come, as long as the concept of input tax credit exist and operates on similar line. Therefore, the principle must be kept in mind.

70. Therefore, substantive rights under the Act cannot be whittled down merely because the dealer who had effected sale fails to pay the tax, if indeed there was an actual transaction of sale. In **CCE** Vs. **Dai Ichi Karkaria Ltd.,** referred to supra, the Hon'ble Supreme Court held that the Modvat credit was a contingent credit. It could be disallowed under certain circumstances. It could not be withdrawn like a credit amount in a bank account. It held that the manufacturer did not have any indefeasible right or title to it. This view applies to input tax credit under the TN VAT Act, 2006 also. Like wise, a dealer under the TN VAT Act,2006 also did not have an indefeasible right. It was contingent on the

dealer establishing a transaction of sale and movement of goods. Mere cash transaction was not sufficient.

71. The Hon'ble Supreme Court further held that once the credit was validly taken and its benefit was available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible.

72. The Hon'ble Supreme Court further also held that once the credit was validly taken, it was indefeasible. The Court further observed that there was no provision in the Central Excise Rules, 1944 which provided for a reversal of the credit by the Excise Authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilized, has to be paid for. This ratio is equally applicable. If the dealers fails to discharge the burden of proof cast on them under Section 17(2) of the TN VAT, Act, 2006, credit can be denied.

73. Therefore, even if credit was availed after complying with the

requirement of Section 19(1) & (10)(a) of TN VAT Act, 2006 and Rule 10 of the TN VAT Rules, 2007, it could be asked to be paid back under the circumstances specified in Section 19(13) and Section 19(15) of the TN VAT Act,2006 under the machinery provided under Section 27 of the Act for credit that is allowed is provisional under Section 19(16) of the TN VAT Act, 2006. In appropriate case, credit can be revoked.

74. The Hon'ble Supreme Court further held that it should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available.

75. Section 19(10) of the TN VAT Act, 2006 states that a registered dealer could claim ITC only on the receipt of the original tax invoice duly filled, signed and issued by a registered dealer from whom the goods are purchased containing such particulars as are prescribed. This is similar to Rule 9 of the Cenvat Credit Rules, 2004. The details required in the invoice are prescribed in Rule 10(2) of TN VAT Rules, 2007.

76. Under Rule 10(2) of the TN VAT Rules, 2007, a dealer intending to avail input tax credit was required to produce the original tax invoice duly filled, signed and issued by a registered dealer, in support of his claim of the input tax credit. Invoices were to contain the details specified therein. Section 19(10)(a) & (b) of TNVAT Act, 2006 and Rule 10(2) of the TN VAT Rules, 2007 are reproduced below for comparison:-

**TABLE-C**

| **Section 19(10) of TNVAT Act, 2006** | **Rule 10(2) of the TNVAT Rules, 2007** |
|---|---|
| (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 | Every registered dealer who claims input tax credit under sub-section (1) of Section 19 shall, **produce the original tax invoice**, in support of his claim of the input tax credit, **containing the following details, namely:-** |

| | |
|---|---|
| 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. | (a) A consecutive serial number;<br>(b) The date on which the invoice is issued;<br>(c) The name, address and the Taxpayer Identification Number of the seller;<br>(d) The name, address and the Taxpayer Identification Number of the buyer;<br>(e) The description of the goods;<br>(f) The quantity or volume of the goods;<br>(g) The Value of the goods;<br>(h) The rate and amount of tax charged; and<br>(i) The total value of the goods. |

77. As mentioned above, Rule 10(2A) was inserted after proviso to Section 19(1) was amended *vide* Second Amendment Act (13 of 2015) with effect from 29.01.2016.

78. A close reading of the above provisions indicates that for a dealer to validly avail Input Tax Credit, the dealer should be in

possession of the original invoice containing the details prescribed under Rule 10(2) of the TN VAT Rules, 2007. However, credit availed was always provisional under Section 19(16) of the TN VAT Act, 2006 and could be denied under any of the circumstances specified and situations contemplated in Section 19(13), 19(15) and 19(16) of the TN VAT Act, 2006 and recovered under the machinery provided under Section 27(2) of TN VAT Act, 2006.

79. In these cases, we are not concerned with the circumstances contemplated under Section 19(10)(b) of TN VAT Act, 2006 which deals with the situation where original invoice is lost. Suffice to keep in mind that Section 19(1), Section 19(10)(a) and 19(10)(b) of the TN VAT Act, 2006 have to be read along with Rule 10(2) of the TNVAT Rules, 2007 and input tax credit avail can be denied as credit availed is provisional and the burden is always under Section 17(2) of the TN VAT Act, 2006 on such person availing input tax credit to establish that input tax credit was validly availed.

80. Section 17, Section 19(15) & 19(16) of the TN VAT Act, read as under:-

**TABLE-D**

| Section 17: Burden of Proof | Section 19(13), 19(15) & 19(16) |
|---|---|
| *(i) For the purpose of assessment of tax under this Act, the burden of proving that any transaction or any turnover of a dealer is not liable to tax, shall lie on such dealer.*<br><br>*(ii) For the purpose of assessment of tax under this Act, the burden of proving that any transaction or any turnover of a dealer is not liable to tax, shall lie on such dealer.*<br><br>*(iii) Notwithstanding anything contained in this Act or in any other law for the time being in force, a dealer in any of the goods specified in the second schedule liable to pay tax in respect of the first sale in the State shall be the first seller of such goods and shall be liable to pay tax at the rate specified in the Second Schedule on his turnover of sale relating to such goods, unless he proves that the sale or purchase, as the case may be, of such goods had already been subjected to tax under* | *19(13) Where a registered dealer without entering into a transaction of sale, issues an invoice, bill or cash memorandum to another registered dealer, with the intention to defraud the Government revenue, the assessing authority shall, after making such enquiry as it thinks fit and giving a reasonable opportunity of being heard, deny the benefit of input tax credit to such registered dealer who has claimed input tax credit based on such invoice, bill or cash memorandum from such date."*<br><br>***19(16) <u>The input tax credit availed by any registered dealer shall be only provisional</u>** and the assessing authority is empowered to revoke the same if it appears to the assessing authority to be **<u>incorrect, incomplete or otherwise not in order</u>**.*<br>*19(15) Where a registered dealer has purchased any taxable goods from another dealer and has availed input tax credit in respect of the said goods and if the registration certificate of the selling dealer is cancelled by the appropriate registering authority, **<u>such registered dealer, who has availed by way of input tax credit, shall</u>** |

| | |
|---|---|
| *this Act.* | ***pay the amount availed on the date from which the order of cancellation of the registration certificate takes effect.*** *Such dealer shall be liable to pay, in addition to the amount due, interest at the rate of two per cent, per month, on the amount of tax so payable, for the period commencing from the date of claim of input tax credit by the dealer to the date of its payment.* |

81. Section 19(16) of TN VAT Act, 2006 also makes it clear, that input tax credit availed by any registered dealer shall be only provisional. Section 19(16) of TN VAT Act, 2006 empowers an Assessing Officer to revoke input tax credit, if it appears to the Assessing Authority that such credit availed was incorrect, incomplete or otherwise not in order. Further under Section 17(2) of the TNVAT Act, 2006, the burden to prove that the dealer was entitled to avail input tax credit lies with the dealer claiming such input tax credit.

82. Thus, wide powers have been vested with the Assessing Officer to revoke the credit availed. Credit can be denied, if it appears to the assessing authority, to be i) incorrect, or ii) incomplete; or iii) otherwise not in order, in which case machinery has been provided under Section 27 of the TN VAT Act, 2006 will be attracted if an assessee/registered dealer fails to establish the same

83. Section 19(13) of the TN VAT Act, 2006 deals with specific situations where a registered dealer without entering into a transaction of sale, issues an invoice, bill or cash memorandum to another registered dealer, with the intention to defraud the Government revenue to facilitate input tax credit being wrongly availed.

84. Under Section 19(13) of the TN VAT Act, 2006, an assessing authority can deny input tax credit availed by a registered dealer who has claimed input tax credit based on such invoice, bill or cash memorandum from such date, where such invoice, bill or cash memorandum were raised by a registered dealer without entering into a transaction of sale with an intention to defraud the Government revenue. This can happen only after investigation at the sellers/dealers end. Therefore, although credit can be availed on the strength of original copy of the invoice, it can be denied at a later point of time as credit availed is provisional.

85. However, before denying input tax credit under Section 19(13) of the TN VAT Act, 2006, the assessing authority has to make an enquiry as it thinks fit and give a reasonable opportunity of being heard to a dealer who has availed such input tax credit being denying the benefit of such input tax credit to such registered dealer. Enquiry has to be in consonance with the machinery under Section 27(2) of TN VAT Act, 2006. If on enquiry the dealer fails to discharge the proof, it has to be construed that there was jurisdictional fact to deny credit under Section 27(2) of the TN VAT Act, 2006.

86. Under Section 19(15) of the TN VAT Act, 2006, where the registration certificate of the selling dealer is cancelled by the appropriate registering authority input credit availed by a registered dealer, who has availed by way of input tax credit can be denied. This will apply to a situation where registered dealer has not paid the tax after collecting the incidence of the from his buyer.

87. As per Section 19(15) of the TN VAT Act, 2006, a dealer who has availed input tax credit is required to pay the amount of credit availed on the date from the date on which cancellation of the registration certificate takes effect by an order. Such a dealer is also liable to pay, in addition to the amount due, interest at two per cent, per month, on amount of tax so payable, for the period commencing from the date of claim of input tax credit by the dealer to the date of its payment. Section 17(2), Section 19(3), Section 19(15) and Section 19(16), Section 27(2) and Section 27(4) of TN VAT Act, 2006 forms a code when read along with Rule 10 of TN VAT Rules, 2007. Following chart explains the position. Thus, Credit availed under Section 19(1) can be denied.

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| ***Section 17(2)*** *For the purpose of claim of input tax credit, the burden of proving such claim shall lie on such dealer.* |
| ***19(16)<u>The input tax credit availed by any registered dealer shall be only provisional</u>*** *and the assessing authority is empowered to revoke the same if it appears to the assessing authority to be* ***<u>incorrect, incomplete or otherwise not in order</u>****.* |

| | |
|---|---|
| *19(13)Where a registered dealer without entering into a transaction of sale, issues an invoice, bill or cash memorandum to another registered dealer, with the intention to defraud the Government revenue, the assessing authority shall, after making such enquiry as it thinks fit and giving a reasonable opportunity of being heard, deny the benefit of input tax credit to such registered dealer who has claimed input tax credit based on such invoice, bill or cash memorandum from such date."* | *19(15) Where a registered dealer has purchased any taxable goods from another dealer and has availed input tax credit in respect of the said goods and if the registration certificate of the selling dealer is cancelled by the appropriate registering authority,* ***<u>such registered dealer, who has availed by way of input tax credit, shall pay the amount availed on the date from which the order of cancellation of the registration certificate takes effect.</u>*** *Such dealer shall be liable to pay, in addition to the amount due, interest at the rate of two per cent, per month, on the amount of tax so payable, for the period commencing from the date of claim of input tax credit by the dealer to the date of its payment.* |

**Section 27(2) of TN VAT Act, 2006**

*Where, for any reason, the input tax credit has been availed* ***wrongly*** *or* ***where any dealer produces false bills, vouchers, declaration certificate or any other documents*** *with a view to support his claim of input tax credit or refund, the assessing authority shall, at any time, within a period of six years from the date of assessment, reverse input tax credit availed and determine the tax due after making such a enquiry, as it may consider necessary:*

*Provided that no order shall be passed under sub-sections (1) and (2) without giving the dealer a reasonable opportunity to show cause against such order.*

| | |
|---|---|
| ***27(4) of TN VAT Act, 2006 prior to*** | ***27(4) of TN VAT Act, 2006 after*** |

| | |
|---|---|
| ***amendment*** | ***amendment*** |
| *In addition to the tax determined under sub-section(2),the assessing authority shall direct the dealer to pay as penalty a sum:*<br><br>*(i) which shall be in the case of first such detection fifty percent of the tax due in respect of such claim; and*<br><br>*(ii) which shall be in the case of second or subsequent detections, one hundred percent of the tax due in respect of such claim.* | *In addition to the tax determined under sub-section (2), the assessing authority shall direct the dealer to pay as penalty a sum which shall be three hundred percent of the tax due in respect of such claim.* |

88. Prior to the Second Amendment Act (13 of 2013), 2013, with effect from 28.5.2013, the rate of interest was one and one quarter precent per month, on amount of tax so payable, for the period commencing from the date of claim of input tax credit by the dealer to the date of its payment.

89. In the case of **Jinsasan Distributors** vs. **Commercial Tax Officer, Chennai,** (2013) 59 VST 256, which was rendered in the context of Section 19(15) of TN VAT Act, 2006, a learned Single Judge of this Court held that the retrospective cancellation of registration

certificate of the selling dealers cannot affect the right of the petitioners/assesses therein who have paid the tax on the basis of invoices and thereafter claimed ITC under Section 19 of TNVAT Act, 2006.

90. In **Jinsasan Distributors** vs. **Commercial Tax Officer, Chennai,** a Single Judge of this Court (2013) 59 VST 256, held as follow:-

> *11. Section 19(15) of the TNVAT Act, 2006 provides that the registered dealer who availed the input tax credit should pay the amount availed on the date from which the order of cancellation of the registration certificate takes effect. In all these cases, without dispute, the orders cancelling the registration certificates of the selling dealers is given with retrospective effect, That is to say, after the assessment orders have been passed granting the benefit of input tax credit.*
>
> *12. Insofar as the cancellation of the registration certificates of the selling dealers is concerned, it is for those selling dealers to canvas the plea as to when it will take effect either on the date of the order or with retrospective effect.* ***Insofar as the petitioners are concerned, they have purchased the taxable goods from registered dealers who had valid registration certificates; paid the tax payable thereon; availed input tax credit; and the assessing officers have passed orders granting such benefit. Therefore, the assessment orders granting input tax credit were validly passed. There was no***

***cancellation of the registration certificates of the selling dealers at that point of time. The petitioners/assessees have paid input tax based on the invoices issued by registered selling dealers and availed input tax credit. The retrospective cancellation of the registration certificates issued to the selling dealers cannot affect the right of the petitioners/assessees, who have paid the tax on the basis of the invoices and thereafter claimed the benefit under Section 19 of the TNVAT Act, 2006. They have utilized the goods either for own use or for further sale. At the time when the sale was made, the selling dealers had valid registration certificates and the subsequent cancellation cannot nullify the benefit that the petitioners/assessees availed based on valid documents.***

91. The learned Single Judge of this Court referred to the decision of the Hon'ble Supreme Court in **State of Maharastra** Vs. **Suresh Trading Company**, (1997) 11 SCC 378. However, the Hon'ble Supreme Court dealt with a specific situation. It was rendered in the context of a statement given by the learned Advocate General of the State. There the transaction was neither in doubt nor disputed by the State Government. Para 6 in **State of Maharastra** vs. **Suresh Trading Company**, (1997) 11 SCC 378 is useful. It reads as under:-

"**6.** *It must also be noted that the learned Advocate General, appearing for the department before the High Court,* ***stated that the genuineness of the***

***transactions between the registered dealer and the respondents was not in doubt and not disputed. This being so, it is difficult to see how there could have been a cancellation of registration with effect from a date that preceded the dates of the transactions and how, accordingly, the respondents could be made liable to pay tax."***

92. While allowing the case of the dealers under a somewhat similar circumstances under Section 19(15) of the TN VAT Act, 2006, the learned Single Judge of this Court in **Jinsasan Distributors** Vs. **Commercial Tax Officer, Chennai,** (2013) 59 VST 256, appears to have been influenced by the ratio of the Hon'ble Supreme Court in **State of Maharastra** Vs. **Suresh Trading Company**, (1997) 11 SCC 378.

93. Paras. 4 & 5 of **State of Maharastra** Vs. **Suresh Trading Company**, (1997) 11 SCC 378 are reproduced as under:-

*"4. The High Court answered the question in the negative in favour of the respondents. The High Court noted that the effect of disallowing the deductions claimed by the respondents was, in substance, to tax transactions which were otherwise not taxable.* ***The condition precedent for becoming entitled to make a tax free resale was the purchase of the goods which were resold from a registered dealer and the obtaining from that registered dealer of a certificate in this behalf. This condition having been fulfilled, the right of the purchasing dealer to make a tax free sale accrued to him****.*

*Thereafter to hold, by reason of something that had happened subsequent to the date of the purchase, namely, the cancellation of the selling dealers' registration with retrospective effect, that the tax free resales had become liable to tax, would be tantamount to levying tax on the resales with retrospective effect.*

*5. In our view, the High Court was right. A purchasing dealer is entitled by law to rely upon the certificate of registration of the selling dealer and to act upon it.* ***Whatever may be the effect of a retrospective cancellation upon the selling dealer, it can have no effect upon any person who has acted upon the strength of a registration certificate when the registration was current.*** *The argument on behalf of the department that it was the duty of persons dealing with registered dealers to find our whether a state of facts exists which would justify the cancellation of registration must be rejected. To accept it would be to notify the provisions of the statute which entitle persons dealing with registered dealers to act upon the strength of registration certificates."*

94. The decision of this Court in **Sri Vinayaga Agencies** Vs. **Assistant commissioner (CT), Vadapalani-I Asessment Circle, Chennai and Another**, (2013) 60 VST 283 (Mad) rendered on 29.01.2013 which is another case, which has been followed all along has to read along with decision of the Hon'ble Supreme Court gave its verdict in **The State of Karnataka** vs. **M/s.Ecom Gill Coffee Trading**

**Private Limited**, dated 13.03.2023 in Civil Appeal.No.230 of 2023.

95. In **Sri Vinayaga Agencies** Vs. **Assistant commissioner (CT), Vadapalani-I Asessment Circle, Chennai and Another**, (2013) 60 VST 283 (Mad), the allegation was that the selling dealer had not paid tax and therefore, credit availed was to be denied. The first respondent therein namely the Assistant Commissioner (CT) had however held that the said sellers was still existing and doing business at Palayamkottai.

96. There the Enforcement Wing Officials had conducted an inspection on 13.07.2010 and on verification of the returns, found that the dealer at Palayamkottai Assessment Circle, namely, M/s.Classic Enterprises, had not filed the monthly returns in Form-I and also not paid the tax to the Department for the relevant period. This was not a case which dealt with cancellation of registration or where registration was obtained to defraud the revenue by issuing invoices to wrongly avail ineligible input tax credit. This was a case when tax was not paid by the selling dealer.

97. Interpreting Section 19(1) read with Section 19(16) of TN VAV

Act, 2006 as it stood then, the learned Single Judge went on to hold that Section 19(1) clearly states that input tax credit can be claimed by the registered dealer, provided if the registered dealer establishes that the tax due on such purchase has been paid by him in the manner prescribed.

98. As mentioned in the beginning of the discussion in this order, a registered dealer selling goods merely passes on the incidence of tax to the buyer. The buyer merely bears the incidence of tax charged and reflected in the sales invoice. The buyer never pays tax to the exchequer unless the buyer is liable to pay purchase tax under Section 12 of the TN VAV Act, 2006 otherwise. It is the seller who pays the tax.

99. The learned Single Judge however observed that it is another matter if the selling dealer has not paid the collected tax and that liability has to be fastened on the selling dealer. Liability cannot be however mulcted on the purchasing dealer who had shown proof of payment of tax on the purchases made.

100. To an extent we are in agreement with the view of the learned single judge in **Sri Vinayaga Agencies** Vs. **Assistant commissioner**

**(CT), Vadapalani-I Asessment Circle, Chennai and Another**, (2013) 60 VST 283 (Mad). However, the view cannot be applied universally where the selling dealer continued to exist where there was no transaction of "sale" or that the registration was obtained only for the purpose of facilitating credit of tax being availed without a transaction of sale. We cannot uphold the view in **Sri Vinayaga Agencies** Vs. **Assistant commissioner (CT), Vadapalani-I Asessment Circle, Chennai and Another**, (2013) 60 VST 283 (Mad) in all cases merely because the registration of the selling dealer was not cancelled if indeed the registration was obtained to create paper transaction without actual sale. The burden to prove that there was indeed a transaction of sales is with the registered dealer availing credit. Till such burden is proved, the credit availed under the *proviso* to Section 19(1) of the TN VAT Act, 2006 can be denied.

101. We have to state that ratio of this Court both in **Jinsasan Distributors** vs. **Commercial Tax Officer, Chennai,** (2013) 59 VST 256 and **Sri Vinayaga Agencies** vs. **Assistant Commissioner (CT), Vadapalani-I Assessment Circle, Chennai and Another,** (2013) 60

VST 283 (Mad) are no longer a good law in the light of the recent decision of the Court in **The State of Karnataka** vs. **M/s.Ecom Gill Coffee Trading Private Limited**, dated 13.03.2023 in Civil Appeal.No.230 of 2023. We shall deal with the same in due course of discussion.

102. The ratio in **Sri Vinayaga Agencies** vs. **Assistant commissioner (CT), Vadapalani-I Assessment Circle, Chennai and Another**, (2013) 60 VST 283 (Mad) cannot be applied in all cases. Likewise, the ratio in **Jinsasan Distributors** Vs. **Commercial Tax Officer, Chennai,** (2013) 59 VST 256, cannot be applied any longer in view of the recent decision of the Hon'ble Supreme Court in **The State of Karnataka** vs. **M/s.Ecom Gill Coffee Trading Private Limited**, dated 13.03.2023 in Civil Appeal.No.230 of 2023.

103. While placing reliance on the aforesaid decision of the Hon'ble Supreme Court in **State of Maharastra** Vs. **Suresh Trading Company**, (1997) 11 SCC 378, the Court in **Jinsasan Distributors** vs. **Commercial Tax Officer, Chennai,** (2013) 59 VST 256, failed to note

the expression in Section 19(15) of the TNVAT Act, 2006 which specifically deals with the situation. Section 19(15) in the TN VAT Act, 2006 is an innovation which was not contemplated under Section 70 of the Karnataka Value Added Tax, 2003. The said decision of a learned Single Judge of this Court, has been followed in the past.

104. If there is a cancellation of registration, the assessing officer can call upon the dealer to repay to the input tax credit availed and utilized if indeed there was no evidence of sale. It may result in denial in the credit. However, it cannot be helped, where registration itself was obtained by such dealer to facilitate input tax credit being availed on such bogus invoice without a corresponding transaction of sale.

105. Therefore, the decision of the learned Single Judge in **Jinsasan Distributors** Vs. **Commercial Tax Officer, Chennai,** placing reliance on **State of Maharastra** vs. **Suresh Trading Company**, (1997) 11 SCC 378 cannot be held to have an universal application in all cases of cancellation of VAT registration of the selling dealer with retrospective date, if registration itself was obtained only to facilitate bogus input tax credit being claimed availed and utilized without actual transaction of

"sale" and supply of goods to cheat the revenue as is contemplated under Section 19(13) of the TN VAT Act, 2006.

106. Therefore a registered dealer claiming input tax credit has to discharge the burden of proof required to be discharged under Section 17(2) of the TN VAT Act, 2006 by showing documents to prove that indeed there was a transaction of sale and payment of amount was made for supply made to the dealer who supplied the goods.

107. Thus, it was incumbent on the part of a registered dealer like petitioner/appellants availing input tax credit to prove that indeed a transaction of "sale" had taken place. They should not only preserve but also produce collateral evidence in the form of transport documents, such lorry receipts or consignment note, etc. when called upon failing which it cannot be said they have discharged the burden of proof required to be discharged under Section 17(2) of the TN VAT Act, 2006.

108. In absence of such document, where there was also a failure on the part of the dealer which raised invoice on the petitioner/appellants for the goods allegedly supplied, either on account of cancellation of

registration or on account of such dummy dealers have disappeared, input tax credit availed and utilized has to be repaid together with interest under the scheme of TN VAT Act, 2006.

109. Till such time the burden of proof is properly discharged, the credit availed has to be held to be provisional under the Scheme of Section 19(16) of the TN VAT Act, 2006 and the assessing officer is empowered to revoke the credit if a dealer fails to discharge the burden.

110. That apart, the decision in **Jinsasan Distributors** Vs. **Commercial Tax Officer, Chennai,** was rendered on 22.11.2012. It was rendered after regular assessments were completed after a thorough scrutiny of the returns by the assessing officers.

111. Whereas, in all these cases with which we are concerned, no assessment orders would have been passed. The assessments were deemed to have been completed in view of amendment to Section 22(2) of the TN VAT Act, 2006 with effect from 19.06.2012 by the Fifth Amendment Act (23 of 2012), 2012.

112. Even for the period prior to 2011-2012, the assessments would have been deemed assessments under *proviso* to the amended Section 22(2) of the TN VAT Act, 2006 in view of Fifth Amendment Act (23 of 2012), 2012. Section 22(1) & (2) of the TN VAT Act, 2006 are reproduced below:-

**TABLE -E**

| Section 22(1) & (2) of the TN VAT Act, 2006 before amendment, i.e. 19.06.2012 | Section 22(1) & (2) of the TN VAT Act, 2006 after amendment, w.e.f. 19.06.2012 |
|---|---|
| 22.Deemed Assessment and procedure to be followed by the assessing authority.-<br>(1)The assessment in respect of the dealer shall be on the basis of return relating to his turnover submitted in the prescribed manner within the prescribed period. | |
| (2)The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are accompanied by the proof of payment of tax and the documents prescribed, and on such acceptance, the assessing authority shall pass an assessment order. | (2)The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are in the prescribed form and accompanied with the prescribed documents and proof of payment of tax. Every such dealer shall be deemed to have been assessed for the year on the 31st day of October of the succeeding year:<br><br>Provided that in respect of such returns submitted for the years 2006-2007, 2007-2008, 2008- 2009, 2009-2010 and 2010-2011, on which assessment order are not passed shall be deemed to have been assessed on the 30th day of June 2012. |

113. The Hon'ble Supreme Court has now categorically held in the

case of **M/s.Ecom Gill Coffee Trading Private Limited** referred to *supra* that "Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under Section 70 of the KVAT Act, 2003.

114. The decision in in **The State of Karnataka** vs. **M/s.Ecom Gill Coffee Trading Private Limited** was rendered which recently was in the context of Section 70 of the Karnataka VAT Act, 2003. Section 70 is a amalgam for the Section 17(2), 19(13) and Section 27 of the TN VAT Act, 2006. It will be useful to refer to Paragraph 9.1 from the said decision reads as under:-

> "*9.1 Thus, the provisions of Section 70, quoted hereinabove, in its plain terms clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC. Burden of proof that the ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and sufficient. The burden of proving the correctness of ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the revenue.* ***Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under Section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond***

***doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, tax invoices and payment particulars etc. The aforesaid information would be in addition to tax invoices, particulars of payment etc. In fact, if a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC.*** *In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per Section 70 of the KVAT Act, 2003 would be upon the purchasing dealer. At the cost of repetition, it is observed and held that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per Section 70 of the Act, 2003."*

115. Section 70 of the K VAT Act, 213 is *pari materia* to the provisions of the TNVAT Act, 2006. For illustration Section 70 of the KVAT Act, 2013 and Section 17(2), 19(3) and 19(15) of the TNVAT Act, 2006 is reproduced below:-

**TABLE-F**

| **Tamil Nadu Value Added Tax Act, 2006** | **Karnataka Value Added Tax Act, 2003** |
|---|---|
| **Burden of Proof:-**<br>"17(2) For the purpose of claim of **input tax credit**, the **burden of proving** such claim shall lie on | 70. **Burden of proof-**<br>(1)For the purposes of payment or assessment of tax or any claim to input tax under this Act, the |

| | |
|---|---|
| such dealer.” | burden of proving that any transaction of a dealer is not liable to tax, or any claim to deduction of input tax is correct, shall lie on such dealer. |
| **Bogus Invoice:-**<br><br>19(13) Where a registered dealer without entering into a transaction of sale, issues an invoice, bill or cash memorandum to another registered dealer, with the intention to defraud the Government revenue, the assessing authority shall, after making such enquiry as it thinks fit and giving a reasonable opportunity of being heard, deny the benefit of input tax credit to such registered dealer who has claimed input tax credit based on such invoice, bill or cash memorandum from such date. | (2)Where a dealer knowingly issues or produces a false tax invoice, credit or debit note, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable to be taxed, or liable to tax at a lower rate, or that a deduction of input tax is available the prescribed authority shall, on detecting such issue or production, direct the dealer issuing or producing such document to pay as penalty:<br><br>(a)in the case of first such detection, three times the tax due in respect of such transaction or claim; and<br>(b)in the case of second or subsequent detection, five times the tax due in respect of such transaction or claim.<br><br>(3) Before issuing any direction for the payment of the penalty under this Section, the prescribed |

| | |
|---|---|
| | authority shall give to the dealer the opportunity of showing cause in writing against the imposition of such penalty.” |

116. Section 19(15) in the TN VAT Act, 2006 was an innovation which was not contemplated in under Section 70 of the Karnataka Value Added Tax Act, 2003.Under Section 70 of the Karnataka Value Added Tax Act, 2003, the consequence was on the dealer issuing such false invoice to cheat revenue by imposing penalty.

117. A close reading of the above provisions indicate that for a dealer to avail input tax credit, the dealer should be not only in possession of the original invoice containing the details prescribed under Rule 10(2) of the TN VAT Rules, 2007 but also other documents establishing movement of goods whether to the buyer or to the consignee. However, such credit is provisional under Section 19(16) of the TN VAT Act, 2006 and could be denied under the circumstances specified in any of the situation contemplated under Section 19(13), 19(15) and 19(16) of the TN VAT Act, 2006 under the machinery provide under Section 27(2) of the Act.

118. In our view, Sections 19(13) and 19(15) of the TN VAT Act, 2006 cannot be considered in a separate compartment. They are complementary and are to be read in conjunction with each other along with Section 19(6) of the TN VAT Act, 2006.

119. We are of the view that what was implicit in *proviso* to Section 19(1) of the TN VAT Act, 2006 at the time of inception was made explicit in the year 2016 with effect from 29.01.2016. The amendments are merely clarificatory in nature.Rule 10(2-A) of the TN VAT Rules, 2007 was incorporated *vide* G.O.Ms.No.18, dated 29.01.2016 with effect from 29.01.2016 which shifted the burden on the dealer purchasing the taxable goods to prove that the tax due on such purchase of goods have actually been remitted in the Government Account is unnecessary if there is sufficient proof of movement of goods and payment of amount.

120. It is only under those circumstances mentioned in Section 19(13), 19(15) or where credit is availed contrary to Section 19(1) of the TN VAT Act, 2006, the machinery provided to recover the amount, Section 27(2) of the TNVAT Act, 2006 can be pressed where Input Tax

Credit has been either wrongly availed or where a dealer produced a bogus invoice bills, vouchers etc. with a view to wrongly claim input tax credit can be pressed into.

121. Under Section 19(13), consequence, is on the person who has availed input tax credit wrongly on the strength of such invoice, bill or cash memorandum which issued with an intention to defraud the Government Revenue. Whereas, under Section 70 of the KVAT Act, 2003, the consequence was on the person raising such invoice.

122. If Input Tax Credit was availed on the strength of invoice of the dealers merely satisfying the requirements of the Rule10(2) of the TNVAT Rules, 2007 without a corresponding transaction of sale with the intention to defraud the Government revenue, the assessing officer can certainly after making such enquiry and after giving a reasonable opportunity of being heard deny the input tax credit to such registered dealer under Section 19(13) of the TN VAT Act, 2006 to such a dealer who has availed Input Tax Credit based on such invoice, bill or cash memorandum under the machinery prescribed under Section 27(2) of the TNVAT Act, 2006.

123. Section 19(15) of the TN VAT Act, 2006 is an innovation as compared to other VAT enactments in the rest of the states in the country as it also contemplates revocation of credit availed even in the event of cancellation of Registration of the dealer who issued such invoices, bill or cash memorandum to defraud the State Revenue. However, not in all cases of cancellation of registration certificate, Section 19(15) of TNVAT Act, 2006 can be pressed into services.

124. On the other, hand, if the registration of the dealer who is stated to have supplied goods is canceled, credit can be denied under Section 19(15) of the TN VAT Act, 2006 to a dealer who has availed input tax credit based on such invoice, bill or cash memorandum with retrospective effect from the date on which such registration is cancelled. As mentioned above, a mere cancellation of registration is not sufficient. It should be proved that the said dealer who issued invoice to the purchasing dealer was a dummy dealer and a fly by night entity and was conceived and registered only to facilitate availing of input tax credit without actual transaction of sale.

125. Section 19(15) of TN VAT Act, 2006 can be pressed into services only where circumstances under Section 19(13) of TN VAT, Act, 2006 are also attracted. Even, if registration is not cancelled, credit availed on the strength of bogus invoices or without a transaction of sale can be denied if such an invoice was issued to facilitate fraudulent credit being availed. Under these circumstances, credit availed can be recovered under Section 27(2) of the Act.

126. Similarly, if tax was paid at the sellers end, the input tax credit cannot be denied merely because registration is cancelled subsequently with retrospective effect. Similarly, as long as there is sufficient proof of delivery goods showing a transaction of sale, input tax credit cannot be denied as the very purpose of enacting the TN VAT Act, 2006 was to allow input tax credit to reduce the cascading effect of the tax.

127. If there was indeed a sale but the registered dealer who had sold goods but had failed to pay the tax from his end, notwithstanding cancellation of registration of such dealer, a dealer who has availed input tax credit on the strength of the original invoice and has documents to

establish the transaction of sale, credit cannot be denied. The remedy that is available to the authorities under the Act is only to recover the tax not paid under Section 27(1) of the TN VAT Act, 2006 from such dealer.

128. The Hon'ble Supreme Court in **M/s.Ecom Gill Coffee Trading Private Limited** referred to *supra* also held that the burden to prove the genuineness of transaction as per Section 70 of the KVAT Act, 2003 (Karnataka Value Added Tax Act, 2003) would be upon the purchasing dealer.

129. The ratio of the Hon'ble Supreme Court in **M/s.Ecom Gill Coffee Trading Private Limited** will apply in a full vigor even in the context of TN VAT Act, 2006. It is not open for the dealer to merely claim that they are *bonafide* purchasers of goods who have discharged the burden by merely paying the amounts to their selling dealers in view of the above decision of the Hon'ble Supreme Court.

130. As far as mismatch between the credit availed on the strength of the invoice issued and the tax paid at the registered dealers end is

concerned, a circular has been issued on 24.02.2021 by the Office of the Principal Secretary Commissioner of Commercial Taxes, Chepauk, Chennai – 600 005 in the light of the direction of a learned Single Judge of this Court in the case of **M/s.JKM Graphics Solutions Private Limited** vs. **The Commercial Tax Officer, Vepery Assessment Circle, Chennai** in W.P.No.105 of 2016 vide order dated 01.03.2017 and another order dated 12.02.2021 in Review Petition No.173 of 2018 in W.P.No.5007 of 2016 dated 12.02.2021.Following guidelines has been issued:-

> *"**3.3 Procedure to be followed in the cases of Mis-match***
>
> *3.3.1 The assessing authority who has raised the dispute of mismatch (herein after called as Original Assessing Authority) shall list out all such pending mismatch cases in respect of his/her assessment circle and report to the DC/JC as well as in the next statistics to be furnished after this circular comes into effect, for which suitable table is being prescribed and thereafter the report the progress every month.*
>
> *3.3.2 The Original Assessing Authority shall undertake verification mismatch transaction report in the department intranet website (tnvat.gov.in) with reference to the data available at both the ends i.e., buyer and seller. On verification of the data, if the Original Assessing Authority could reconcile the mismatch and finds that the mismatch is due to*

*clerical or inadvertent error the Assessing Authority shall pass appropriate orders dropping further action.*

*3.3.3 If the Original Assessing Authority is unable to resolve either the whole or part of the mismatch, then the Original Assessing Authority shall issue notice to the dealer concerned indicating the discrepancy with an opportunity to show cause to reconcile the same. After the receipt of reply and after due enquiry, the Original Assessing Authority finds that the sing has effected the transaction shall make a request to Other End Assessing Authority through email (zimbra mail) marking copy to concerned DC and JC and seek for the requisite details of verification. If on enquiry Original Assessing Authority is of the view buyer has made bogus claim / wrong claim, by being involved in bill trading by producing bogus invoice, etc., the buyer shall be assessed to tax/reversal of ITC, as the case may be, then the Original Assessing Authority shall pass appropriate orders in accordance with provisions of the TNVAT Act, 2006.*

*3.3.4 The Other End Assessing Authority shall verify the details provided to him / her with reference to the manually filed original / revised returns or by issuing show cause notice and calling for the details from the dealer. After the receipt of reply and after due enquiry, the Other End Assessing Authority finds that the seller has reported the transaction and paid the tax due shall report the same to original Assessing authority and both of them shall drop further proceedings and on the other hand that if the whole or part of the transactions are not reported by the seller, then shall initiate assessment proceedings against the seller and shall pass appropriate orders in accordance with provisions of the TNVAT Act, 2006. The result of such action shall be reported to*

*the Original Assessing Authority.*

*3.3.5 The Assessing Authority should issue show cause notice along with all the connected to the assessment seeking objections. On receipt of objections, the Assessing Authority shall fix a date and time of personal hearing (either physical or virtual hearing). The assessing officer shall grant adequate opportunity to the dealer to put forth their objections by duly following the principles of natural justice. During the course of enquiry, either on a request made by the assessee or suomotu, the Assessing Authority can summon the other end dealer and on request, a cross examination may be provided to the assessee if such dealer is available. However, if the dealer is non-existent the Assessing Officer may proceed to make an assessment on the basis of material on record in accordance with law. The entire process involving issue of show cause notice till final order may be completed within a period of 180 days.*

*3.3.6 The Territorial Deputy Commissioners shall oversee the work and ensure that the verification reports are promptly be sent and the cases are finalized without any undue delay."*

131. In our view, input tax credit can be denied only if the invoices issued to the petitioners/appellants by the registered dealers were bogus invoices and/or invariance with the office copy of the invoice maintained at the registered dealers end who effected such sale to the petitioners/appellants and where there was no movement of goods for the

corresponding value declared in the original copy of invoice contemplated under Rule 10(2) of TN VAT Rules, 2007.

132. However, if the petitioners/appellants have paid for value of goods reflected in the original copy of the invoice in their custody and there is no dispute on the same, mere mismatch in credit information gathered at the registered dealers end who effected sale to petitioners/appellants is of no consequence if there are collateral evidence to show the movement of goods for the value to the petitioners/appellants or their consignees directly. Under these circumstances, we are of the view that credit cannot be denied to that extent and the only option available for the authorities is to recover tax not paid by such dealer by invoking the machinery under TN VAT Act, 2007.

133. If a dealer claims input tax credit on purchases, such dealer/purchaser will have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax original invoices would not be sufficient to claim ITC in the light of the decision of the Hon'ble

Supreme Court in **M/s.Ecom Gill Coffee Trading Private Limited**.

134. Therefore a dealer claiming ITC has to prove the actual transaction of sale by furnishing the name and address of the selling dealer, details of the vehicle which was/were used for delivery of the goods, tax invoices and payment particulars etc. The above information would be in addition to tax invoices, particulars of payment etc., as held by the Hon'ble Supreme Court in M/s.Ecom Gill Coffee Trading Private Limited.

135. In the light of the above decision of the Hon'ble Supreme Court and in the light of the above discussion, we hold that the challenge to the impugned orders in T.C.Nos.19 to 21 of 2022 has to fail. Considering the fact that there is no challenge by the Commercial Tax Department insofar as the benefit of decision of this Court in **Jinsasan Distributors** case referred to *supra* has been conferred the rights that have already crystallized in favour of the assessees/petitioners in T.C.Nos.19 to 21 of 2022 alone are not disturbed. Since the cases have been remitted back, these petitioners shall file their reply within 30 days.

The authority shall pass orders in the light of the observation contained herein.

136. Having dealt with main issues arising out of denial of input tax credit and in the background of the amendment to Section 19 of TN VAT Act, 2006 vide Tamil Nadu Act, 13 of 2015 with effect from 29.01.2016. We now proceed to deal with the cases of the respective appellants and writ petitioners and answer the issue.

Writ Appeals (W.A.):

137. The Writ Appeals have been filed against the separate common order dated 15.06.2021 in W.P.No.23200 of 2016 etc. batch and W.P.No.7517 of 2015 etc. batch.

138. The details of the assessment orders and the corresponding Writ Petitions corresponding to Writ Appeals are detailed as under:-

**TABLE:II**

| Sl.No. | W.A.No. | Name | W.P.No. | Impugned/ Assessment Order | I.O/A.O. Dated |
|---|---|---|---|---|---|
| 1. | 2714 of 2021 | M/s.Sameera | 7517 of 2015 | TIN:33511465287/ | 27.02.2015 |

| | | | | | |
|---|---|---|---|---|---|
| | | Timber and Plywoods | | 2011-2012 | |
| 2. | 2637 of 2021 | Tvl., Selva Furnitures | 23769 of 2016 | TIN:33784723806/ 2014-2015 | 27.05.2016 |
| 3 | 2638 of 2021 | | 23767 of 2016 | TIN:33784723806/ 2012-2013 | |
| 4. | 2639 of 2021 | | 23768 of 2016 | TIN:33784723806/ 2013-2014 | |
| 5. | 2640 of 2021 | | 23766 of 2016 | TIN:33784723806/ 2011-2012 | |
| 6. | 119 of 2022 | M/s.SSB Industries | 23201 of 2016 | TIN:33694723806/ 2012-2013 | 23.05.2016 |
| 7. | 125 of 2022 | | 23200 of 2016 | TIN:33694723806/ 2011-2012 | |
| 8. | 131 of 2022 | | 23203 of 2016 | TIN:33694723806/ 2014-2015 | |
| 9. | 135 of 2022 | | 23202 of 2016 | TIN:33694723806/ 2013-2014 | |
| 10. | 1194 of 2022 | M/s.Amman Industries | 30828 of 2016 | TIN:33604723807/ 2013-2014 | 25.07.2016 |
| 11. | 1195 of 2022 | | 30829 of 2016 | TIN:33604723807/ 2014-2015 | |
| 12. | 1197 of 2022 | | 30827 of 2016 | TIN:33604723807/ 2012-2013 | |
| 13. | 1201 of 2022 | | 30826 of 2016 | TIN:33604723807/ 2011-2012 | |
| 14. | 451 of 2022 | M/s.JBM Dakshin | 22105 of 2015 | TIN:33610944730/ 2010-2011 | 06.07.2015 |
| | | | | TIN:33340944636/ 2010-2011 | |
| 15. | 2618 of 2021 | M/s.Sri Ganga Steel Enterprises Pvt. Ltd. | 6807 of 2015 | TIN:33611701330/ 2011-2012 | 14.01.2015 |
| 16. | 2607 of 2021 | | 6808 of 2015 | TIN:33611701330/ 2012-2013 | |

139. The operative portion in the impugned order in these Writ Petitions are almost identical. Relevant portion of the common order dated 15.06.2021 passed in one of the batch are reproduced below:-

> *15.Jurisdictional error should not result in exoneration of liability. Jurisdictional error, if any committed, is technical, and thus, rectifiable. In such circumstances, the Courts are expected to quash the order passed by an incompetent authority and remand the matter back for fresh adjudication. Contrarily, if an assessee is exonerated from liability, undoubtedly, the purpose and object of the Act is defeated.*
>
> *16.The growing practice in the High Court is to file writ petitions under Article 226 of the Constitution of India without exhausting the statutory remedies provided under the Act. The points raised in this regard are statutory violations. However, even such statutory violations can be dealt with by the Appellate authorities or the Appellate Tribunals. This apart, in a writ petition, if such orders are passed with jurisdictional errors and quashed without any remand, then an injustice would be caused to the very spirit of the statute enacted for the benefit of the public at large. Thus, Courts are expected to be cautious, while granting exoneration of liability merely on the ground of jurisdictional errors, if any committed by the authorities competent. On some occasions, jurisdictional errors are committed wantonly or in collusion with the assessees, knowingly that there is a possibility of escaping from the clutches of law. Thus, the higher authorities of the Department are expected to be*

*watchful and review the orders passed by the subordinate authorities and in the event of any negligence, dereliction of duty, collusion or corrupt activities, then such officials are liable to be prosecuted apart from initiation of departmental disciplinary proceedings. The procedures to be followed in the department for assessment are well settled. Thus, the authorities competent are not expected to commit such jurisdictional errors in a routine manner. In these circumstances, review of such orders by the higher authorities are imminent to form an opinion that there is willful or intentional act for commission of such jurisdictional errors, enabling the assesses to get exonerated from the liability. Liability and jurisdictional errors are distinct factors, and therefore, Courts are expected to provide an opportunity to the Department to decide the liability on merits and in accordance with law with reference to the provisions of the Act and Rules and guidelines issued by the Department.*

*17.Large number of writ petitions are filed without exhausting the statutory appeal remedies and High Court is also entertaining such writ petitions in a routine manner. Keeping such writ petitions pending for long time would cause prejudice to the interest of the assessee also. Thus, such statutory provisions regarding the appeal are to be decided at the first instance, enabling the litigants to avail the remedy by following the procedures as contemplated under law. Such writ petitions are filed may be on the ground of jurisdiction or otherwise. However, the Courts are expected to ensure that all such legal grounds available to the parties are adjudicated before the proper forum and only after exhausting the statutory remedies, writ petitions are to be entertained. In the absence of exhausting such remedies, High Court is losing the benefit of*

*deciding the matter on merits, as the High Court cannot conduct a trial or examine the original records in the writ proceedings under Article 226 of the Constitution of India. Thus, the Courts shall not provide unnecessary opportunities to the assessee to escape from the liability merely on the ground of jurisdictional error, which is rectifiable.*

*18.These being the principles to be followed, this Court has no hesitation in arriving a conclusion that the petitioners are bound to exhaust the statutory appellate remedy as contemplated under the provisions of the TNVAT Act. Thus, the petitioners are at liberty to approach the appellate authority by filing appeal/revision and by following the procedures contemplated. The delay, if any occurred, for filing the appeal, shall be condoned by the appellate authority and the appeal shall be taken on file to be adjudicated on merits and in accordance with law and by affording opportunity to all the parties concerned.*

*19.With the above observations and directions, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed."*

140. The learned Single Judge has not dismissed the Writ Petition on the merits of the case. The learned Single Judge has merely directed the appellants who were the petitioners before the writ court to work out

their remedy before the Appellate Authority against the Assessment Orders impugned under TN VAT Act, 2006.

141. A reading of the above table would indicate that in the case of Writ Appeals in Sl.Nos.1,14 & 17, predate amendment to Section 19 of the TN VAT Act, 2006 and Rule 10 of the TN VAT Rules, 2007vide Tamil Nadu Act, 13 of 2015 with effect from 29.01.2016.

142. The view to be taken in the above Tax Cases has to be followed as rest of the cases deal with the orders passed subsequent to the amendment though for the period prior to the aforesaid amendment.

143. We shall however give details of the cases and the order passed by the Assessing officers which were subject matter of the Writ Petitions.

| **W.A.No.2714 of 2021** | | **M/s.Sameera Timber &Plywoods** |
|---|---|---|
| **Table-II** | **Sl.No.1** | **Assessment Year : 2011 - 2012** |

144. This Writ Appeal has been filed by the appellant against the Common Order dated 15.06.2021 passed by the learned Single Judge of this Court in W.P.No.23200 of 2016 etc.,batch & W.P.No.7517 of 2015 etc., batch, dismissing the writ petition of the appellant challenging the assessment order dated 27.02.2015 for the assessment year 2011-2012.

145. The appellant had earlier suffered an assessment order for the aforesaid assessment year on 27.11.2014. On the issue relating to ITC on purchase effected from dealers whose registration were cancelled, the issue was answered against the petitioner on the ground that the appellant had not furnished any records to substantiate the inward movement of goods. The registration of the suppliers who had purportedly supplied the goods to the appellant were cancelled. Therefore, issue was answered against the petitioner.

146. The petitioner had preferred a Writ Petition before this Court in W.P.No.34743 of 2014. By an order dated 23.12.2014, the cases were remanded back to the Assessing Officer after referring to the decision of this Court in the following cases:-

i. **Sri Vinayaga Agencies** vs. **Assistant Commissioner (CT), Vadapalani-I Assessment Circle, Chennai and Another**, (2013) 60 VST 283 (Mad);
ii. **Jinsasan Distributors** vs**. Commercial Tax Officer (CT), Chintadripet Assessment Circle, Chennai**, (2013) 59 VST 256 (Mad).

147. Pursuant to the above, a revised assessment order came to be passed by the Assessing Officer on 27.02.2015. The appellant however was unable to produce necessary documents to substantiate movement of goods such as lorry receipts. It was held that mere payment of amounts to the supplier/dealer was not sufficient to prove the transactions were genuine to claim input tax credit.

148. Since the appellant had failed to furnish the required documents, we see no merits in the present Writ Appeal. We leave it open to the appellant to file statutory appeal before the appellate authority to be decided in the light of the observation in this order.

| | | |
|---|---|---|
| **W.A.No.2637 to 2640 of 2021** | | **M/s.Selva Furnitures** |
| **Table-II** | **Sl.Nos.2 to 5** | **Assessment Year : 2011-2012 to 2014-2015** |

149. The above Writ Appeals have been filed by the appellant

against the Common Order dated 15.06.2021 passed by the learned Single Judge of this Court in W.P.No.23200 of 2016 etc., batch & W.P.No.7517 of 2015 etc., batch, dismissing the writ petitions of the appellants challenging the assessment order passed by the Commercial Tax Officer dated 27.05.2016 for the assessment years 2011-2012 to 2014 to 2015.

150. The allegation of the petitioner is that the petitioner was making name sake purchase of Timber and effecting immediate name sake sales to another dealer and thereby creating a trail to claim ITC to be availed by the subsequent buyers for being offset against the tax liability. The purchase and the sale have been found to be bogus in the impugned order.

151. That apart the issue also involved sales suppression and etc. as detailed below:

**TABLE:II A**

| Particulars | 2011-2012 | 2012-2013 | 2013-2014 | 2014-2015 |
|---|---|---|---|---|
| Sales suppression estimated on the basis of excess payments | . | | Rs.3,36,58,889 | Rs.6,71,62,531 |
| Sales suppression proposed on the basis | | | Rs.1,16,16,175 | Rs.5,25,02,540 |

| | | | | |
|---|---|---|---|---|
| of excess receipts | | | | |
| Sales suppression determined on the basis of excess payments and determined under Section 27(1) | Rs.97,27,496 at 14.5% | Rs.1,65,62,291 | Rs.4,52,75,064 taxable at 14.5% | Rs.11,96,65,071 at 14.5% |
| Tax due levied at 14.5% | Rs.14,10,487 | Rs.24,01,532 | - | |
| Taxable turnover proposed under Section 27(1) Tax Proposed | Rs.97,27,496 at 14.5% | Rs.42,63,346 | - | |
| Total Tax turn over determined under Section 27 (1) | - | Rs.2,08,25,637 | - | |
| Total Tax determined under Section 27 (1) | - | Rs.30,19,717 | - | |
| Tax levied | 14,10,487 | Rs.30,19,717 | Rs.65,64,884 | Rs.1,73,51,435 |
| Reversal of Input Tax Credit determined under Section 27 (2) | Rs.36,88,954 | Rs.1,26,60,4378 | Rs.31,58,544 | Rs.1,04,45,462 |
| Penalty under Section 27(3): It is also levied at 150% of | Rs.21,15,731 | Rs.45,29,576 | Rs.98,47,326 | Rs.2,60,27,153 |
| Penalty under Section 27 (4) levied at 50% | Rs.18,44,477 | Rs.1,26,60,438 | Rs.31,58,544 | Rs.1,04,45,462 |

152. There are several disputed questions of facts which are involved. Therefore, the order passed by the learned Single Judge cannot be interfered. We are therefore of the view, the Writ Appeals are liable to be dismissed. However, we give liberty to the appellant to file a statutory appeal before the Appellate Authority. The Appellate Authority shall dispose such appeal in the light of the law declared by us.

| | | |
|---|---|---|
| **W.A.Nos.119, 125, 131 & 135 of 2022** | | **M/s.SSB Industries** |
| **Table-II** | **Sl.Nos.6 to 9** | **Assessment Year : 2011-2012 to 2014-2015** |

153. These Writ Appeals have been filed by the appellant against the Common Order dated 15.06.2021 passed by the learned Single Judge of this Court in W.P.No.23200 of 2016 etc., batch & W.P.No.7517 of 2015 etc., batch, dismissing the writ petitions of the appellants challenging the impugned assessment order passed by the Commercial Tax Officer dated 23.05.2016 for the assessment years 2011-2012 to 2014-2015.

154. The issue involved in the respective assessment orders dated 23.05.2016 deals with Input Tax Credit Adjustment Register not maintained at the place of business of the petitioner. The place of business was found empty and that the petitioner was indulging in bill trading and raising fictitious bills to facilitate fraudulent input tax credit being availed by their purchasers.

155. Apart from the above, the assessment orders also deals with sales suppression determined in the light of bank statement etc., as

detailed below:

**TABLE:II B**

| Particulars | 2011-2012 | 2012-2013 | 2013-2014 | 2014-2015 |
|---|---|---|---|---|
| Sales suppression estimated on the basis of excess payments and proposed | Rs.59,40,000 | Rs.9,64,30,697 | Rs.12,33,72,422 | Rs.30,00,74,473 |
| Sales suppression proposed on the basis of excess receipts | Rs.45,43,326 | Rs.1,07,30,000 | Rs.6,99,91,865 | Rs.26,17,66,888 |
| Total Sales suppression proposed U/s.27(1) | - | Rs.10,71,60,697 taxable at 14.5% | Rs.20,24,64,830 taxable at 14.5% | Rs.56,18,41,361 taxable at 14.5% |
| Tax levied | Rs.15,21,532 | Rs.1,55,38,301 | Rs.2,93,57,400 | Rs.8,14,66,991 |
| Taxable turnover proposed under Section 27(1) Tax Proposed | Rs.1,04,93,326 at 14.5% | | - | |
| Tax determined | | | - | |
| Reversal of Input Tax Credit determined under Section 27 (2) | Rs.40,93,763 | Rs.3,20,57,234 | Rs.4,55,11,445 | Rs.1,91,49,060 |
| Penalty under Section 27(3): It is also levied at 150% of | Rs.22,82,298 | Rs.2,33,07,451 | Rs.4,40,36,100 | Rs.12,22,00,495 |
| Penalty under Section 27 (4) levied at 50% | Rs.20,46,881 | Rs.3,20,57,234 | Rs.4,55,11,445 | Rs.1,91,49,060 |

156. Here also there are several disputed questions of facts which are involved apart from denial of input tax credit availed and utilized. Therefore, the order passed by the learned Single Judge cannot be interfered.

157. We are therefore of the view, the Writ Appeals are liable to be

dismissed. However, we give liberty to the appellant to file a statutory appeal before the Appellate Authority. The Appellate Authority shall dispose such appeal in the light of the law declared by us.

| | | |
|---|---|---|
| **W.A.Nos.1194, 1195, 1197 & 1201 of 2022** | | **M/s.Amman Industries** |
| **Table-II** | **Sl.Nos.10 to 13** | **Assessment Year : 2011-2012 to 2014-2015** |

158. These Writ Appeals have been filed the appellant against the Common Order dated 15.06.2021 passed by the learned Single Judge of this Court in W.P.No.23200 of 2016 etc., batch & W.P.No.7517 of 2015 etc., batch, dismissing the Writ Petitions of the appellants challenging the assessment order dated 25.07.2016 passed by the Commercial Tax Officer for the respective assessment years 2011-2012 to 2014-2015.

159. The Assessment Orders not only deal with issues arising out of ITC wrongly availed by the petitioner but also on account of sales suppression etc as detailed below:

**TABLE: II C:**

| Particulars | 2011-2012 | 2012-2013 | 2013-2014 | 2014-2015 |
|---|---|---|---|---|
| Sales suppression | Rs.83,46,934 | Rs.1,99,45,272 | Rs.16,83,05,257 | Rs.52,56,14,740 |

| | | | | |
|---|---|---|---|---|
| estimated on the basis of excess payments and proposed | | | | |
| Sales suppression proposed on the basis of excess receipts | Rs.27,00,000 | Rs.34,58,637 | Rs.9,46,61,518 | Rs.25,63,51,154 |
| Total Sales suppression proposed U/s.27(1) | - | - | Rs.26,29,66,775 taxable at 14.5% | Rs.78,19,65,894 taxable at 14.5% |
| Tax levied | - | - | Rs.3,81,30,182 | Rs.11,33,85,054 |
| Taxable turnover proposed under Section 27(1) Tax Proposed | Rs.1,10,46,934 at 14.5% | Rs.2,34,03,909 at 14.5% | - | |
| Tax determined | Rs.16,01,805 | Rs.33,93,567 | - | |
| Reversal of Input Tax Credit determined under Section 27 (2) | Rs.28,53,948 | Rs.28,53,948 | Rs.3,10,13,965 | Rs.62,84,609 |
| Penalty under Section 27(3): It is also levied at 150% of | Rs.24,02,707 | Rs.50,90,350 | Rs.5,71,95,273 | Rs.17,00,77,581 |
| Penalty under Section 27 (4) levied at 50% | Rs.14,26,974 | Rs.28,53,948 | Rs.3,10,13,965 | Rs.62,84,609 |

160. The place of business of the appellant was inspected by the enforcement wing on various dates, wherein it was found that a place of business was empty and no books of account were maintained and that the appellant was found indulging in bill trading by making fictitious bill to legitimize bogus purchase and sales in the chain transactions.

161. The allegations against the appellant is that the appellant has made name sake purchases and effected immediate name sake to another and thereby creating a trial of claim of input claim of input to be used by subsequent buyers to offset output tax on unaccounted purchase as detailed above.

162. There are several disputed questions of facts which are involved apart from denial of input tax credit availed and utilized. The appellant is therefore not entitled for any relief in these Writ Appeals. It would be neither prudent for us to sit as appellate authority for desirable to get into disputed questions of facts.

163. We are therefore of the view, these Writ Appeals are liable to be dismissed. However, we give liberty to the appellant to file a statutory appeal before the Appellate Authority. The Appellate Authority shall dispose such appeal in the light of the observation in this order.

| | | |
|---|---|---|
| **W.A.No.451 of 2022** | | **M/s.JBM Dakshin** |
| **Table-II** | **Sl.Nos.14** | **Assessment Year : 2010 to 2011** |

164. This Writ Appeal has been filed by the appellant against the Common Order dated 15.06.2021 passed by the learned Single Judge of this Court in W.P.No.23200 of 2016 etc., batch & W.P.No.7517 of 2015 etc., batch, dismissing the writ petitions of the appellants challenging the assessment order dated 06.07.2015 passed by the Commercial Tax Officer for the respective assessment years 2010 to 2011.

165. The appellant herein had purchased goods from three dealers whose registrations were cancelled prior to the date of purchase of the goods. Thus, a notice was issued to the appellant on 08.12.2014 and on 22.05.2014.

166. The appellant replied to the same stating that the registration of the dealers who supplied the goods were active at the time of purchase and had also enclosed copies of Bank Statement to substantiate the payments. The appellant was called upon to furnish the documents. The appellant was unable to substantiate movement of goods to the worksite and freight and transportation charges.

167. It was observed that on verification of purchase that each and every consignment consisted of more than 4000cement bags which would require proper transportation documents like lorry receipts to the appellant at the site at Pallavaram and payment of freight charges the appellant had failed to produce any proof of inward movement of goods from a supplier from Virugambakkam, Koratur, Chennai to the appellants site at Pallavaram.

168. The appellant has not furnished proof of delivery of goods. Therefore, we are not inclined to interfere with the impugned order. The appellant is given liberty to file a statutory appeal before the Appellate Authority.

| | | |
|---|---|---|
| **W.A.No. 2607 & 2618 of 2021** | | **M/s.Sri Ganga Steel Enterprises Private Limited** |
| **Table-II** | **Sl.Nos.15 to 17** | **Assessment Year : 2011-2012 & 2012-2013** |

169. These Writ Appeals have been filed by the appellant against the Common Order dated 15.06.2021 passed by the learned single Judge of this Court in W.P.No.6807-609 of 2015. By the impugned Order, the

learned Single Judge dismissed these writ petitions of the appellants against the assessment order dated 14.01.2015 passed by the Commercial Tax Officer for the assessment years 2011-2012 to 2013-2014.

170. The appellant herein had availed Input Tax Credit for the respective Assessment Years as detailed below:

**TABLE: II D:**

| Assessment Years | ITC amount claimed |
|---|---|
| 2011-2012 | Rs.31,66,78,653/- |
| 2012-2013 | Rs.40,24,48,724/- |

171. The purchases were allegedly made from a dealer who evaded tax from the bill traders and effected circular transaction among themselves to evade tax. Relevant portion of the orders dated 14.01.2015 of the Commercial Tax Officer for the three years read identically. They read as under:-

> *"Objections filed by the dealers have been carefully examined. Regarding the claim of ITC on the purchases made by the dealers, they have not produced documents for the following particulars.*

i. *Purchase orders*
ii. *Movement of goods*
iii. *Bank Statements*
iv. *Closing stock at the end of the each financial year.*
v. *Godown for keeping the goods towards claim of ITC on the closing stock.*

*Sec. 2(33)(i) provides for the sales will be taken into account only on a transfer in any goods for cash, deferred payment or other valuable consideration. Sec. 2(29) provides for place of business of the dealers and Sec. 19(13) provides for denial of ITC where a registered dealer without entering into a transfer of sale. The provisions are extracted below:*

*Sec. 2(33)(i):*
*Sale with all its grammatical variations and cognate expressions means every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of business for cash, deferred payment or other valuable consideration and includes*
*A transfer, otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration.*

*Sec. 2(29):*
*Place of business' means any place in the State where a dealer purchases or sells goods and includes*

i. *a warehouse, godown or other place where a dealer stores his goods;*
ii. *a place where the dealer processes, produces or manufactures goods; and*
iii. *a place where the dealer keeps his accounts, registers and documents.*

*Sec. 19(13):*
*Where a registered dealer without entering into a transaction of sale, issues an invoice, bill or cash memorandum to another registered dealer, with the intention to defraud the Government revenue, the assessing authority shall, after making such enquiry as it thinks fit and giving a reasonable opportunity of being heard, deny the benefit of input tax credit to such registered dealer who has claimed input tax credit based on such invoice, bill or cash memorandum from such date."*

172. The last paragraph of the orders dated 14.01.2015 of the Commercial Tax Officer in the respective assessment orders are also identical except for the amount involved. We reproduce the last para with the details of the amount for the sake of the record as under:-

*In the above circumstances objections filed by the dealers are overruled and confirmed the proposals made in the notice*

| | **W.A.No.2618/21 (A.Y.2011-2012)** | **W.A.No.2607/21 (A.Y.2012-2013)** |
|---|---|---|
| Disallowance of ITC: | Rs.31,66,78,653/- | Rs.40,24,48,724/- |
| Reversal of ITC Paid: | Nil | Nil |
| Balance | Rs.31,66,78,653/- | Rs.40,24,48,724/- |
| Penalty levied under Sec. 27(3)(c) at 150% | | |
| Due | Rs.47,50,17,979/- | Rs.60,36,73,086/- |
| Paid | Nil | Nil |
| Balance | Rs.47,50,17,979/- | Rs.60,36,73,086/- |

173. In the impugned order of the Commercial Tax Officer, there is a mere reproduction of the reply of the appellant. If what was stated in the notices which preceded the Assessment order dated 14.01.2015 passed by the Commercial Tax Officer, are true, the demand has to be confirmed.

174. However, the above extracted portion of the impugned Orders of the Commercial Tax Officer indicates that the respective orders passed are non speaking order. There is no discussion in it.

175. We are therefore, inclined to set aside the impugned order and remit the case back to the Commercial Tax Officer or such other officer authorized in their behalf to pass a speaking order on merits in the light of the observation and the position of law that is clarified by us in this detailed order.

**Writ Petitions (W.P):**

176. We shall now deal with the respective Writ Petitions.

177. The table below gives the details of the respective writ petitions challenging the respective Impugned Order /Assessment Order:-

## TABLE-III

| Sl.No. | Name | W.P.No. | Impugned/ Assessment Order | I.O/ A.O. dated |
|---|---|---|---|---|
| 1. | Tvl.Lathika Oil Trading | 9372 of 2019 | TIN:33353623043/ 2015-2016 | 24.01.2019 |
| 2. | Tvl.Atmosfaira Impex Private Limited | 11482 of 2019 | TIN:33891465854/ 2012-2013 | 31.01.2019 |
| 3. | | | | |
| 4. | | 11483 of 2019 | TIN:33891465854/ 2013-2014 | |
| 5. | | | | |
| 6. | | 11484 of 2019 | TIN:33891465854/ 2014-2015 | |
| | | 11488 of 2019 | TIN:33891465854/ 2015-2016 | |
| | | 11489 of 2019 | TIN:33891465854/ 2016-2017 | |
| 7. | M/s.Indo Metal Press Private Limited | 12450 of 2019 | TIN:33431603262/ 2012-2013 | 27.03.2019 |
| 8. | Tvl.Murugan Garments | 15046 of 2019 | TIN:33572441268/ 2010-2011 | 26.04.2019 |
| 9. | | | | |
| 10. | | 15049 of 2019 | TIN:33572441268/ 2011-2012 | |
| 11. | | | | |
| 12. | | 15050 of 2019 | TIN:33572441268/ 2012-2013 | |
| 13. | | 15052 of 2019 | TIN:33572441268/ 2013-2014 | |
| | | 15053 of 2019 | TIN:33572441268/ 2015-2016 | |
| | | 15055 of 2019 | TIN:33572441268/ 2014-2015 | |
| 14. | M/s.A.S.Textiles | 1226 of 2021 | TIN:33492404743/ 2013-2014 | 30.11.2020 |
| 15. | | | | |
| 16. | | 1230 of 2021 | TIN:33492404743/ 2014-2015 | |
| | | 1239 of 2021 | TIN:33492404743/ 2015-2016 | |

| | | | | |
|---|---|---|---|---|
| 17. | Aassaan Commodity Trade | 18761 of 2021 | TIN:33741562791/ 2012-2013 | 30.07.2021 |
| 18. | | 18766 of 2021 | TIN:33741562791/ 2013-2014 | |
| 19. | | 18769 of 2021 | TIN:33741562791/ 2014-2015 | |
| 20. | M/s.Sharda Motors Industries | 11808 of 2022 | TIN:33921661341/ 2012-2013 | 11.03.2022 |
| 21. | | 11811 of 2022 | TIN:33921661341/ 2012-2013 | |
| 22. | | 11812 of 2022 | TIN:33921661341/ 2010-2011 | |
| 23. | | 11814 of 2022 | TIN:33921661341/ 2013-2014 | |
| 24. | | 11816 of 2022 | TIN:33921661341/ 2014-2015 | |
| 25. | | 11819 of 2022 | TIN:33921661341/ 2015-2016 | |

178. In all these Writ Petitions, instead of filing a statutory appeal against the respective Impugned Orders/Assessment Orders, the respective petitioners like the writ appellants in the above cases have filed these writ petitions by placing reliance.

179. It is the case of the respective writ petitioner that the requirements in the proviso to Section 19 (1) of the TNVAT Act, 2006 as amended vide with effect from 29.01.2016 vide Tamil Nadu Act, 13 of 2015 cannot be retrospectively imposed on these petitioners for the transactions which took place during prior to the period in dispute.

180. We shall briefly narrate the facts of each of the cases individually though these cases were argued as if common issue arises for consideration before us.

| | | |
|---|---|---|
| **W.P.No.9372 of 2019** | | **Tvl.Lathika Oil Trading** |
| **Table-III** | **Sl.No.1** | **Assessment Year :2015-2016** |

181. In the above Writ Petition, the petitioner has challenged the impugned assessment order dated 24.1.2019 passed by the respondent Commercial Tax Officer for the assessment year 2015-2016.

182. The impugned order invokes best judgment assessment notice under section 22(4) of the Tamil Nadu Value Added Tax Act, 2006 and confirms to tax liability.

183. In support of the case of the petitioner in W.P.No.9372 of 2019_(**M/s.Tvl.Lathika Oil Trading,Represented by its Proprietrix, V.Juliet Prema Arputham**), learned Counsel Mr.R.Seniappan submitted as follows:-

> "*The seller and the purchaser both of them are doing business in the same complex and assess on the files of the respondent herein. As requested*

*through reply dated 10.10.2016 in response to the notice dated 26.08.2016, the respondent fairly verified and accepted and certified in the impugned order itself page no 22 and inner page no 3 of the impugned order ) that the seller has filed monthly returns with payment of disputed tax, however rejected his claim of ITC on the ground that the proof of movement was not produced despite the fact that the goods has in fact been moved by own arrangements as evidenced from the letter dated 09.10.2016 given by SALATH MADHA TRANSPORT which is available in page no 13 in the Typed Set . The impugned assessment is undoubtedly nothing but double time tax on a single transaction. Further, the impugned order is in relevance to the assessment year 2015-16 prior to section 8 of Second Amendment Act (13 of 2015) effective from 29th January 2016."*

184. It was argued as if the impugned order deals only with the denial of input tax credit under Section 19 of the TN VAT Act, 2006, when indeed the case also pertains to sales suppression and other issues.

185. The petitioner has declared total purchase turnover of Rs.47,06,78,317/- and has claimed input tax credit of Rs.2,32,22,792/-. This ITC has been utilized by the petitioner for discharging the tax liability on the taxable turnover of Rs.48,15,14,239/- declared in the returns.

186. We have perused the impugned assessment order. We are of the view that the invocation of section 22(4) of the Act TN VAT Act,2006 was *prima facie* warranted as there is suppression of purchase turnover by the petitioner in the returns filed for the assessment year 2015-2016. The case was not actually confined to denial of input tax credit alone. As far as demand for ITC of Rs.3,08,110/- on purchase turnover of Rs.61,62,195/-.

187. Thus, there was no justification on the part of the learned counsel to have clubbed the present case along with the present batch as other issues were also involved. Had we taken a favourable view in favour of these petitioners in so far as denial of Input Tax Credit was concerned, we may have committed a grave injustice to the State Revenue by assuming the issue involved was confined only to denial of Input Tax Credit. We are therefore of the view, the Writ Petition is liable to be dismissed. However, we give liberty to the appellant to file a statutory appeal before the Appellate Authority. The Appellate Authority shall dispose such appeal in the light of the observation contained in this

order.

188. A reading of the impugned order passed also indicates that in the returns filed under the provisions of the TNVAT Rules, 2007, the petitioner had wrongly declared inter-state purchase of edible oil of as Rs.62,22,482/- only transported from Krishnapattinam to Chennai by M\S.Salok Matha Transport as against Rs.3,81,44,280/-

189. Thus, there was a suppression of taxable turnover of Rs.3,19,21,798/- (Rs.3,81,44,280 – Rs.62,22,482) in the returns filed. The total purchase turnover of the petitioner should have been actually Rs.50,26,00,106/- (Rs.47,06,78,317 + Rs.3,19,21,789) instead of mere Rs.47,06,78,317/- as was declared by adding only a sum of Rs.62,22,482/- in interstate purchase to the local purchase of edible oil of Rs.47,06,78,317/-.

190. The petitioner is *prima facie* liable to pay differential tax of Rs.16,24,262/- on the local sales effected on the balance purchase

turnover of Rs.3,19,21,798/- (Rs.3,81,44,280-Rs.62,22,482) which escaped assessment.

| | | |
|---|---|---|
| **W.P.Nos.11482, 11483, 11484, 11487 & 11489 of 2019** | | **Tvl.Atmosfaira Impex Private Limited** |
| **Table-III** | **Sl.Nos.2 to6** | **Assessment Year :2012-2013 to 2016-2017** |

191. These Writ Petitions pertains to the above mentioned assessment years. The petitioner has challenged the assessment orders passed by the Assessing Officer/Respondent therein on 31.01.2019. The dispute pertains to the period partly before the amendment and partly after the amendment to Section 19 of the TNVAT Act, 2006.

192. Apart from the main issue relating to denial of input tax credit, there are several other issues. For the purpose of clarity, the following chart may be referred to. It indicates that there as other issues as well as detailed below:

**TABLE-III A:**

| A.Y. | A. | B. | C. | D. | E. | F | G |
|---|---|---|---|---|---|---|---|
| 2012-2013 | Sales suppression when compared with Balance Sheet | Purchase suppression and estimated sales omission | Transit sale not supported by documents and declaration forms | Input tax reversal for bogus purchases | Mismatch on cross verification of Annexure I of buyer and Annexure II of seller | | |
| 2013-2014 | Sales suppression when compared with Balance Sheet | Purchase suppression and estimated sales omission | Purchase suppression and estimated sales omission | Reversal of input tax on sales to unregistered dealers | Reversal of input tax on interstate sales u/s. 19(2)(v) from 01.11.2014 | Input tax reversal for bogus purchases | Mismatch on cross verification of Annexure I of buyer and Annexure II of seller |
| 2014-2015 | Sales suppression when compared with Balance Sheet | Sales suppression when compared with Balance Sheet | Reversal of input tax on sales to unregistered dealers | Reversal of input tax on interstate sales u/s. 19(2)(v) from 01.11.2014 | Reversal of Input tax on excess claim of Input tax | Disallowance of claim of purchase and sales return | Input tax reversal for bogus purchases |
| 2015-2016 | Purchase suppression and estimtaed sales omission | Purchase suppression and estimated sales omission | Input tax reversal for bogus purchases | Mismatch on cross verification of Annexure I of buyer and Annexure II of seller | Wrong claim of Input tax` | | |
| 2016-2017 | Input tax reversal for bogus purchases | Reversal of input tax on bogus purchases | | | | | |

193. As far as reversal of ITC is concerned with which we are primarily concerned in these Writ Petitions and Writ Appeals, the

petitioner has availed ITC from the alleged purchase of goods from M/s.Megha Trading Corporation and M/s.South India Trading Corporation.

194. There are no documents that were filed to substantiate any transfer of goods or movements of goods. Thus, the Assessing Officer has concluded that the ITC availed on the alleged sale from these two concerns were bogus.

195. The Assessing Officer noted that these are closely connected trading concerns of the petitioner. M/s.Megha Trading Corporation is owned by none other than the mother of the Director Thiru.Ashutosh Goel and wife of another director Thiru.Rajesh Goel of Tvl.Atmosfaira Impex Private Limited.

196. Tvl.South India Trading Corporation is owned by none other than one of the Director (Thiru.Rajesh Goel) of Tvl.Atmosfaira Impex Private Limited. The residential places of the Proprietors Tmt.Deepika Goel (Tvl.Megha Trading Corporation) and Thiru.Rajesh Goel (Tvl.South India Trading Corporation) is none other than the Residential

Address No.115/C-16, Nelson Chamber, Nelson Manickam Road, Aminjikarai, Chennai – 29 of the Director of Thiru.Ashutosh Goel (Tvl.Atmosfaira Impex Private Limited).

197. It has been further observed that there is no storing place for the goods purchased by Tvl.Megha Trading Corporation and Tvl.South India Trading Corporation. The sellers Tvl.Megha Trading Corporation and Tvl.South India Trading Corporation have therefore not at all handled the goods. Therefore, it has been concluded that there was only transfer of money with no corresponding transfer of goods and movement of goods.

198. The details of ITC availed by the petitioner on the strength of invoices raised by these concerns are as under:-

**TABLE-III B:**

| | | |
|---|---|---|
| W.P.No.11482 of 2019 | A.Y.2012-2013 | M/s.Megha Trading Corporation (TIN 33481464479) on the turnover of Rs.2,76,80,080/- with input tax of **Rs.16,81,512**/- and Tvl.South India Trading Corporation on the turnover of Rs.1,63,66,117/- with input tax of **Rs.9,48,786/-** |
| W.P.No.11483 of 2019 | A.Y.2013-2014 | M/s.Megha Trading Corporation (TIN 33481464479) on the turnover of **Rs.3,04,51,364/-** with input tax of **Rs.19,42,981/-** |

| | | |
|---|---|---|
| W.P.No.11484 of 2019 | A.Y.2014-2015 | M/s.Megha Trading Corporation (TIN 33481464479) on the turnover of **Rs.1,02,43,605/-** with input tax of **Rs.5,91,165/-** |
| W.P.No.11488 of 2019 | A.Y.2015-2016 | M/s.Megha Trading Corporation (TIN 33481464479) on the turnover of **Rs.19,64,604/-** with input tax of **Rs.2,00,713/-.** |
| W.P.No.11489 of 2019 | A.Y.2016-2017 | M/s.Megha Trading Corporation (TIN 33481464479) on the turnover of Rs.54,288/Rs.19,64,604/-. |

199. A reading of the assessment orders indicate that the petitioner had purchased goods from M/s.Megha Trading Corporation and M/s.South India Trading Corporation. M/s.Megha Trading Corporation is owned by wife of one of the Director and the mother of another Director. M/s.South India Trading Corporation which is owned by the Director Rajesh Goel. There are only trails of money transfers.

200. We do not wish to express any opinion on the merits of the case. Suffice to state that the petitioner has to challenge the impugned order before the Appellate authority like others. Therefore, the above writ petition is dismissed with the above observation.

| | | |
|---|---|---|
| **W.P.No.12450 of 2019** | | **M/s.Indo Metal Press Private Limited** |
| **Table-III** | **Sl.Nos.7** | **Assessment Year :2012-2013** |

201. In the above Writ Petition, dispute pertains to the following four heads:-

| | |
|---|---|
| i. Interstate Sales against Form | : Dropped |
| ii. Sale of Asset for the Value of Rs.293715.00 | : Dropped |
| iii.Difference in sales turnover reported as per balance sheet and monthly returns of value of Rs.10838697.00 | : Dropped |
| iv. Reversal of ITC on ineligible claim of Rs.81194142.00 | The Period of the order as far as Reversal of ITC on ineligible claim of Rs.81194142.00 reads as under:<br><br>The reply filed by the dealer has been carefully examined. At the time of inspection the dealers even though ready to produce original bills, but they are not able to produce for movement of goods such as Lorry receipt, way bill, G.C.notes, loading and unloading expenses etc to Enforcement Officials. On receipt of notice issued and at the time of personal hearing also the dealers have not produced any records such as Lorry receipt, way bill, G.C.Notes, loading and unloading expenses etc still now. Though the dealers are in possession of original bills at the time of inspection they have not produced the bills before me for verification and for cross examination. Hence in the absence of any records and proof of the movement of the goods, the input tax credit of Rs.81194142.00 availed by the dealer hereby reversed as proposed in the notice. |

202. In our view, the petitioner has not made out a case for interference. The petitioner has not produced any documents to substantiate movement of goods. Therefore we given liberty to the petitioner to challenge the impugned orders, if advised before the Appellate within the time stipulated in this order. The Appellate Authority shall dispose such appeal in the light of the observations in this order.

| | | |
|---|---|---|
| **W.P.Nos.15046, 15049, 15050, 15052, 15053, 15055 of 2019** | | **Tvl.Murugan Garments** |
| **Table-III** | **Sl.Nos.8 to 13** | **Assessment Year :2010-2011 to 2015-2016** |

203. In these Writ Petitions the dispute pertains to pre-amendment to Section 19 of the TNVAT Act, 2006 and Rule 10 of the TNVAT Rules, 2007.

204. The details of the ITC that has been sought to be reversed for the respective assessment years are as follows:-

**TABLE-III C:**

**For the Assessment Year 2010-2011**:

| Sl.No. | Name of the Seller | TIN No | Purchase Value (Rs) | ITC Claimed (Rs) |
|---|---|---|---|---|
| 1. | R.G.Spinning Mills | 33283203217 | 2243076/- | 89723/- |
| 2. | Shree yarns | 33722442495 | 780231/- | 31209/- |
| 3. | Sathya Traders | 33353784742 | 620192/- | 24808/- |
| | | Total | 3643499/- | 145740/- |

**For the Assessment Year 2011-2012**:

| Sl.No. | Name of the Seller | TIN No | Purchase Value (Rs) | ITC Claimed (Rs) |
|---|---|---|---|---|
| 1. | R.G.Spinning Mills | 33283203217 | 76615/- | 3064/- |
| 2. | RK Tex | 33192391328 | 718765/- | 19784/- |
| 3. | Sri Vaishnavidevi Textiles Private Limited | 33112504765 | 3326731/- | 91268/- |
| 4. | Sri Ayyappa Traders | 33312302990 | 1808931/- | 72356/- |
| 5. | Karur Srini yarn mills Private Limited | 33633661590 | 999495/- | 39980/- |
| 6. | Annapoorna yarns | 33972502643 | 927260/- | |
| | | Total | 7857779/- | 263543/- |

**For the Assessment Year 2012-2013**:

| Sl.No. | Name of the Seller | TIN No | Purchase Value (Rs) | ITC Claimed (Rs) |
|---|---|---|---|---|
| 1. | Latha Traders | 33153785919 | 510000/- | 25500/- |
| 2. | R.Mani Traders | 33203767316 | 496800/- | 24540/- |
| 3. | Sri Vaishnavi Devi Textiles Private Limited | 33112504765 | 103606941/- | 2929625/- |
| | | Total | 104613741/- | 2979965/- |

**For the Assessment Year 2013-2014**:

| Sl.No. | Name of the Seller | TIN No | Purchase Value (Rs) | ITC Claimed (Rs) |
|---|---|---|---|---|

| | | | | |
|---|---|---|---|---|
| 1. | Latha Traders | 33153785919 | 479520/- | 23796/- |
| 2. | Sri Balaji Textiles | 33362311646 | 1345276/- | 67263/- |
| 3. | Sri Balaji Garments | 33782309184 | 494215/- | 24710/- |
| 4. | Annapoorna Yarns | 33972502643 | 772737/- | 38636/- |
| | | Total | 3091748/- | 154585/- |

**For the Assessment Year 2014-2015**:

| Sl.No. | Name of the Seller | TIN No | Purchase Value (Rs) | ITC Claimed (Rs) |
|---|---|---|---|---|
| 1. | Balaji Tex | 33362311646 | 1000980/- | 50049/- |
| 2. | RR Tex | 33633786722 | 13428176 | 671409/- |
| | | Total | 14429156/- | 721458/- |

**For the Assessment Year 2015-2016**:

| Sl.No. | Name of the Seller | TIN No | Purchase Value (Rs) | ITC Claimed (Rs) |
|---|---|---|---|---|
| 1. | Sree Sakthi Tex | 33826278208 | 14007240/- | 700362/- |
| 2. | RR Tex | 33633786722 | 4942980/- | 247149/- |
| 3. | Murugappa Cottons | 33242444893 | 2808000/- | 140400/- |
| 4. | KirthinithiTex | 33786360971 | 705840/- | 35292/- |
| | | Total | 22464060/- | 35292/- |

205. The reasons given in the respective assessment years are as follows:-

i. *Mere possession of TIN No by the unethical sellers is not a proper proof.*

ii. *The continuous stated in their objections that they have reported the purchases in the returns and all payments were made through cheques and bank transfer but for the above transaction, no proof has been produced, and hence disallowed, Further the Lorry Vouchers*

*were fabricated after the issue of Notice.*

206. The petitioner has no documents to substantiate that the dealers to whom payments were made at that the supplies effected by them accompanied in other collateral documents to substantiate the movement of goods.

207. The petitioner has relied on the decision of this Court in the case of **Althaf Shoes Private Limited** vs. **Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai**, (2012) 50 VST 179 (Mad) and in the case of **Sri Vinayaga Agencies** vs. **Assistant Commissioner (CT), Vadapalani-I Assessment Circle, Chennai and another**, (2013) 60 VST 283 (Mad).

208. In our view, the petitioner has not made out a case for interference. The petitioner has no documents to establish movement of goods. Therefore, we give liberty to the petitioner to challenge the impugned orders, if advised before the Appellate Authority, within the time stipulated in this order. The Appellate Authority shall dispose such

appeal in the light of the law declared by us.

| | | |
|---|---|---|
| **W.P.Nos.18761, 18766 & 18769 of 2021** | | **M/s.A.S.Textiles** |
| **Table-III** | **Sl.Nos.14 to 16** | **Assessment Year :2013-2014 to 2015-2016** |

209. In these Writ Petitions the petitioner has challenged assessment orders dated 30.11.2020 for the above mentioned assessment years. The premises of the petitioner were inspected on 19.09.2016.During the course of inspection the petitioner, admitted to the lapse pointed and paid a sum of Rs.24,80,841/-.

210. The petitioner paid the aforesaid amount by way of cheque. After paying the aforesaid amount, the petitioner filed W.P.No.35235 of 2016 before this Court stating that the enforcement wing officers had no power to collect cheque at the time of inspection. The Writ Petition was disposed on 05.10.2016 with the direction to return the cheque. Thus, the cheque which was given during the inspection could not be honored.

211. On 26.06.2019, for the respective assessment years, assessment orders were passed. These assessment orders were challenged

by the petitioner before this Court in W.P.Nos.27163, 27165 & 27167 of 2019. By an order dated 25.10.2019, these assessment orders were set aside with the direction to the Assessing Officer to redo the assessment once again after giving an opportunity to personal hearing to the petitioner. Thus, the impugned assessment orders for the respective assessment years have been passed.

**TABLE-III D:**

| Sl.No. | W.P.No. | A.Y. | ITC | Penalty |
|---|---|---|---|---|
| 1. | 1226 of 2021 | 2013-2014 | Rs.50,430/- | Rs.75,645/- |
| 2. | 1239 of 2021 | 2015-2016 | Rs.3,95,823/- | Rs.11,87,469/- |
| 3. | 1230 of 2021 | 2014-2015 | Rs.19,42,396/- | Rs.29,13,594/- |

212. The Assessing Officer has concluded that the petitioner has not discharged the burden of proof. The petitioner had purchased the goods from genuine dealers and thus, it has been concluded that credit availed on the strength of bogus invoices cannot be allowed.

213. The petitioner has also not produced the purchase bill. Thus, the credit has been denied.

214. In our view, the petitioner has not made out a case for interference. The petitioner has no documents to establish movement of goods. Therefore, we give liberty to the petitioner to challenge the impugned orders, if advised before the Appellate Authority within the time stipulated in this order. The Appellate Authority shall dispose such appeal in the light of the law declared by us.

| | | |
|---|---|---|
| **W.P.Nos.18761, 18766 & 18769 of 2021** | | **M/s.Aassaan Commodity Trade** |
| **Table-III** | **Sl.Nos.17 to 19** | **Assessment Year :2012-2013 to 2014-2015** |

215. In these Writ Petitions the petitioner had challenged the impugned assessment order dated 30.07.2021 passed by the respondent Sales Tax Officer for the assessment year 2012-2013 to 2014-2015.

216. The reading of the notice issued to the petitioner on 10.03.2016 and the reply filed indicates that the petitioner is a

partnership concern which is a Registered dealer under the provisions of the TNVAT Act, 2006 read with TNVAT Rules, 2007.

217. The petitioner has an office in T.Nagar and obtained a registration for dealing in Food Processor (mixie), Wet Grinder and Cotton Yarn.The petitioner claims to have purchased cotton yarn from six different dealers as detailed below:-

| Sl.No. | Name of the dealer | TIN Number |
|---|---|---|
| 1. | SKS Engineering | 33422124791 |
| 2. | Saravana Plastic | 33431668449 |
| 3. | Vijay Plastic | 33521668448 |
| 4. | Jai Jai Ramakrishna | 33600320395 |
| 5. | Aassaan Global Trade | 33611561941 |
| 6. | Arunachala Impex Pvt. Ltd. | 33250021294 |

218. One of the dealer namely M/s.Aassaan Global Trade is a proprietary concern which is owned by one of the partner of the petitioner. The place of business of the proprietary concern namely M/s.Aassaan Global Trade and that of the petitioner are one and the same. Similarly, the petitioner has also purchased goods from M/s.Arunachala Impex Private Limited during the period in dispute i.e., during the month of July and August 2014.

219. The petitioner claims to have effected sale to the said proprietary concern namely M/s.Aassaan Global Trade and to M/s.Arunachala Impex Private Limited and has utilized the IncomeTax Credit availed on the invoice raised by them on the petitioner.

220. The contention of the department is that there is no corresponding movement of goods by the above two concern and thus, the credit was wrongly availed to discharge the tax liability on the sale effected to these two concerns viz.,M/s.Aassaan Global Trade and to M/s.Arunachala Impex Private Limited.

221. It is further submitted that proviso to Section 19 of the TNVAT Act, 2006, inserted only with effect from 29.01.2016 and therefore it cannot be imposed retrospectively to deny credit which was validly availed.

222. In support of the above plea, the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Bharat**

**Sanchar Nigam Limited(BSNL)**vs**. Union of India**, (2006) 3 SCC 1, wherein it held as under:

> "*43. Transactions which are mutant sales are limited to the clauses of Article 366 (29-A). All other transactions would have to qualify as sales within the meaning of the Sales of Goods Act, 1930, for the purpose of levy of sales tax."*

223. It is further stated that there is a deem sale between the petitioner and the two concerns and therefore the petitioner was justified incorrect and utilizing the same for discharging the lax liability on the sales effected under the provisions of the TNVAT Act, 2006.

224. In our view, the petitioner has not made out a case for interference. The petitioner has no documents to substantiate movement of goods. Therefore, we give liberty to the petitioner to challenge the impugned orders, if advised before the Appellate Authority within the time stipulated in this order. The Appellate Authority shall dispose such appeal in the light of the law declared by us.

| | | |
|---|---|---|
| **W.P.Nos.11808, 11811, 11812, 11814, 11816 & 11819 of 2022** | | **M/s.Sharda Motors Industries** |
| **Table-III** | **Sl.Nos.20 to 25** | **Assessment Year :2010-2011 to 2015-2016** |

225. The petitioner purchased automobiles as well as other raw materials required for manufacture of auto parts from some vendors located within the State and outside the State.

226. The petitioner availed ITC. Initially proceedings were initiated on various dates for the respective assessment years. The Department had issued notices to deny ITC to the petitioner on account of mismatch of ITC between Annexure I of the petitioner and Annexure II filed by the respective selling dealers who sold the goods during the period in dispute and on account of cancellation of the Registration.

227. The details of the demand proposed in the respective notices issued to the petitioner for the respective assessment years and the demand confirmed in all the writ petitions are as under:

| Sl. | Financial | Mismatch | Cancellation | Total | Penalty | Total |
|---|---|---|---|---|---|---|

| No | Year | | | | | Proposed demand | confirm | |
|---|---|---|---|---|---|---|---|---|
| | | Proposed Credit Mismatch with seller tax record in sales tax portal | Confirm Credit Mismatch with seller tax record in sales tax portal | Proposed Input taken from RC Cancelled dealers | Confirm Input taken from RC cancelled dealers | | | |
| 1. | 2010-11 | 1,07,47,458 | 1,02,72,725 | 13,70,606 | 13,70,606 | 1,21,18,063 | 1,74,64,997 | 2,91,08,328 |
| 2. | 2011-12 | 1,33,70,416 | 46,29,725* | 13,446 | 13,452 | 13,383,862 | 69,64,766 | 1,16,07,943 |
| 3. | 2012-13 | 93,91,386 | 45,20,157 | 18,664 | 18,663 | 94,10,050 | 68,08,230 | 1,13,47,050 |
| 4. | 2013-14 | 24,72,966 | 2,07,587 | 1,19,119 | 1,19,124 | 25,92,085 | 4,90,067 | 8,16,778 |
| 5. | 2014-15 | 7,20,256 | 4,40,067 | 90,834 | 90,840 | 8,11,090 | 7,97,201 | 13,28,108 |
| 6. | 2015-16 | 9,62,600 | 4,63,352 | 1,27,689 | 1,27,689 | 10,90,289 | 8,86,562 | 14,77,603 |
| | Total | 3,76,65,082 | 2,05,33,613 | 17,40,357 | 17,40,374 | 3,94,05,440 | 3,34,11,823 | 5,56,85,810 |

**actually 33,16,213*

228. As far as penalty is concerned the State Tax Officer has held as under:-

> "***Conclusion of the Assessing Authority:***
>
> *They have requested to drop the penalty as it would not be warranted, based on the judgments delivered by the Hon'ble High Court. They have added that the proposals are not at all finding out any willful suppression on the part of the dealer to suffer with penalty. The contention of the dealer was carefully examined and found that not sustainable. The proposals are early establishing the leakage of revenue by their wanton suppression of fact. The transaction has resulted to the determent of Government Ex-chequer which can be considered only as a willful suppression to defraud the Government Revenue. Hence, their contention is not sustainable and the penalty is warranted."*

229. The reasoning in all the orders for the respective years are similar. The Department's contention was that the petitioner had wrongly availed credit in excess and therefore issued notices to the petitioner for the respective assessment years. Apart from the above, there are several other issues also in the above proceedings that were initiated against the petitioner.

230. Barring the above two issues all the issues have attained finality. There is no further challenge in so far as above two mentioned issues i.e. regarding mismatch between the credit availed in Annexure I of the petitioner and Annexure II filed by the respective selling dealers, the demand has been confirmed in the light of Circular dated 18.01.2019 bearing reference Circular No.3/2019/Q1/39643/2018, Relevant portion of the order for Assessment Year 2011-2012 as far as Mismatch reads as under:

> ***Conclusion of the Assessing Authority:***
>
> *The above readings were carefully examined.*
>
> *The total transactions are analysedwith two major categories.*
>
> *1] Reported by the seller at the other end, settling the mismatching on some or other reason.*

*2] Not established with reference to the reporting at other end.*

*As far as the reconciled turnover with reporting at the other end, it works out to the input tax credit value of Rs.1,00,54,203.00. The entries have been reflecting the concern transactions and the mismatching has been crept out due to technical and administrative differences. Otherwise the transactions are established and the concern turnover is bonafide with documentary evidence. Hence, the proposal to the extent of Rs.1,00,54,203.00 is hereby dropped.*

*As far as the turnover of Rs.33,16,213.00, it seems to be not established with the verification of reporting at the other end. In supporting the argument of the dealer in the absence of reporting at the other end, the Court verdict is mainly concerned to exercise the discretionary decision in justifying the transaction. The judgments referred above are directing that the buyer cannot be denied for input tax credit when they have established their genuineness. In this connection, the dealers have furnished the copy of invoices and proof for bank payment on the transactions. Whereas, they have not furnished the documentary evidence for the movement of goods without which the transfer of property is not established.*

*With the copy of invoice, the transfer of title of goods is established. With the proof for bank payment, the realization of proceeds is established. Whereas, in the absence of proof for transportation, the transfer of property is not established. Only with the above three aspects, a purchase or sales can be constituted. Hence, when they have not established their genuineness of purchase on their part, the benefit of the judicial verdict will not go in favor of them.*

*Moreover, the provisions of Section 19 has been amended vide Gazette no.217 dated 14.10.2015 as detailed below:*

*In section 19 of the Principal Act:-*

*/1/ Sub-Section/1/*

*/a/ for the expression, "Tax paid or payable", the expression "Tax Paid" shall be substituted;*

*/b/ for the provision, the following provision shall be substituted, namely-*

*"Provided that the registered dealer, who claims input tax credit, shall establish that the tax due on purchase of goods has actually been paid in the manner prescribed by the registered dealer who such sold and that the goods have actually been paid and delivered:*

*From the above, when the selling dealer is at default, the buying dealer has to be establish the genuineness of physical occurrence of the transaction, as envisaged in Section 17 of the TNVAT Act 2006 which is not fulfilled. In the absence of compliance of statutory provisions, the assessing authority finds no room to consider the transaction as physically occurred and genuine. Moreover, as per the amended provisions of the Act, the "paid" position of sufferance of tax is not at all established when it is not found reported at the other end. In fine, the concern transactions are not established in a genuine way to be considered. Hence, the proposal to the extent of Rs.33,16,213.00 is hereby confirmed as their contention is not sustainable with the statutory stipulation. However, the narrative result of the examination is furnished in Annexure to the order."*

231. As far as retrospective cancellation of registration, the Assessment Order has held as under:

> ***"Conclusion of the Assessing Authority:***
>
> *On this issue, it is clarified that the Registration Certificates of the selling dealers have been cancelled with retrospective effect. When a proceeding is passed, the content of the proceeding is legal stand, not mere the date of proceedings. Even though the date of proceedings are subsequent to the dates of their purchase, the effective date of cancellation is prior to that. Hence, the selling dealers have turned into unregistered dealers from the date mentioned in the proceeding itself. Then the issue is whether the buying dealers, who have made the tax payment to them in the intermittent time, are eligible on the tax sufferance or not. In this issue, it is clarified that many High Court verdicts have approved and upheld the decision of Government, passing an retrospective effect orders. Hence, the cancellation of Registration on retrospective effect is has legal approval and thereby the date of effect mentioned in the proceedings also has legal approval. On the other hand, the cancellation of Registration is ordered not on any incidental occasion but it is passed only the perpetual default of the concern dealers. Only on the continuous and perpetual default, the certificates are cancelled. Hence, the transaction effected by them from the original date itself becomes suspicion and not physically occurred. As per the provisions of Section 17 of the Act, when a dealer avails input tax credit on their purchases the responsibility of proving the tax sufferance at their point lies on the shoulder of the buyer. Establishing the genuineness of the physical occurrence of the transaction, in the case*

*default at the selling point, becomes inevitable legal responsibility of the buyer to be discharged, without which their claim cannot be considered. The input tax credit becomes a credit on their part only when the concern tax amount is remitted into the Government account, not before that.*

*The concern judgments referred by them were carefully examined, which are encouraging that the buyer cannot be denied for the default of the seller. To allow the benefit of the concern judgements, they have to establish their genuineness on their physical occurrence of the transaction and prove that the default is only on the part of the seller. When, basically, they have not discharged their responsibilities, as per the provisions of Section 17 of the Act, the default cannot be assigned only on the part of the seller. In such issue, as per the provisions, the buyer is responsible for establishing the genuineness. In this line, their contention is not sustainable.*

*From the above, when the selling dealer is at default, the buying dealer has to be establish the genuineness of physical occurrence of the transaction, which can be constituted only with the following three components of a genuine transaction.*

1) *The valid & original purchase invoice, issued by the selling dealer to establish the transfer of title of goods.*
2) *The proof for bank or cash payment of the proceed, made against the consideration to establish the rights on transfer of title of goods.*
3) *proof of transportation to establish the transfer of possession of goods.*

*In the above contention of the dealer, they have not established the right on the transfer of title, by way of not filing any bank payment proof and not established the transfer of possession of goods, by way of not filing transportation proof. In the absence of fulfillment of the legal stand, the transaction happened in between the parties has not constituted the purchase or sale. Hence, their purchase transactions are not valid and qualified in accordance with the law and resultant credit on their tax sufferance of tax at the purchase point is also not legal credit on their part to claim. In view of the above facts, their contention that the selling dealers have been alive on the date of purchase is not sustainable and untenable.*

232. In the result:-

i. **T.C.Nos.19, 20 & 21 of 2022** are dismissed.

ii. **W.A.Nos.451 of 2022 & 2714 of 2021 & 2637 to 2640 of 2021 & 119, 125, 131 & 135 of 2022 & 1194, 1195, 1197 & 1201 of 2022 & W.P.No.9372 of 2019 &11482 to 11484, 11488 & 11489 of 2019 & 12450 of 2019 & 15046, 15049, 15050, 15052, 15053 & 15055 of 2019 & 1226, 1230 & 1239 of 2021 & 18761, 18766 & 18769 of 2021 & 11808, 11811, 11812, 11814, 11816 & 11819 of 2022**, are dismissed with liberty to the appellants/petitioners to file their respective statutory appeals before the Appellate Authority within thirty days of this order.

iii. In **W.A.No. 2607 and 2618 of 2021**, the impugned orders are set aside and the cases are remitted back to the Original Authority to pass a fresh order on merits in the light of the observation in this order.

iv. These petitioners/appellants are at liberty to file their appeals/replies/representations before the authority within a period of 30 days from the date of receipt of a copy of this order.

v. The Original Authority/Appellate Authority as the case may be shall pass order orders within three months of the receipt of this order after affording an opportunity of personal hearing.

[S.V.N., J.] [C.S.N., J.]

18.04.2023

Neutral Citation : Yes / No
Index : Yes / No
rgm

**S.VAIDYANATHAN, J.**
**and**
**C.SARAVANAN, J.**

rgm

To:-

The Joint Commissioner (CT),
The Government of Tamil Nadu,
Salem Division,
(Now Erode Division),
Erode

**T.C.Nos.20, 21 & 19 of 2022**
**and etc batch**

18.04.2023