

(2009) 10 MAD CK 0151

In the Madras High Court

Case No : Writ Petition No. 15860 of 2009

SNJ Distillers Private Limited

APPELLANT

Vs

Assistant Commissioner (CT) (FAC) and Another

RESPONDENT

Date of Decision : 25-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Value Added Tax Act, 2006 — Section 19(3), 2(11), 2(21), 3(5)

Citation : (2010) 35 VST 253

Hon'ble Judges : Chitra Venkataraman, J

Bench : Single Bench

Judgement

Chitra Venkataraman, J.—The Petitioner is challenging the notice dated May 22, 2009, whereby the first Respondent has called upon the Petitioner to pay input tax credit on capital goods adjusted by the Petitioner along with interest within 15 days of receipt of notice.

2. The present notice had emanated after considering the objection filed by the Petitioner to the notice issued indicating the proposal that the Petitioner is not eligible for input tax credit. Originally notice was issued to the dealers of the Petitioner-company. The dealers have filed their reply objecting to the notice that they are not eligible to input tax credit on capital goods. The Petitioner contended that as manufacturer they are entitled to input tax credit as per Section 3(5) of the Tamil Nadu Value Added Tax Act, 2006.

3. The Petitioner is engaged in the manufacturer of alcoholic beverages assessable under the Second Schedule to the Tamil Nadu Value Added Tax Act. The Petitioner claimed input tax credit on the purchase of capital goods. The first Respondent issued a notice dated December 10, 2008 that the Petitioner was not entitled for any input tax credit as per proviso to Section 3(5) of the Act and directed the Petitioner to file form J instead of form I. The Petitioner objected to the same that in view of the specific exclusion of words "capital goods" in the proviso, the Petitioner is entitled for the benefit of input tax credit. The first

Respondent herein rejected the same and hence the present writ petition.

4. The Petitioner contends that they are entitled to the input tax credit on the sales tax paid by them on the purchase of capital goods unless there is any express prohibition for the same. With specific definition for "goods" u/s 2(21) and "capital goods" u/s 2(11), the proviso to Section 3(5) have to be given the natural meaning and cannot be stretched to take away the benefit u/s 19(3) of the Act.

5. Having regard to the issue raised that the Petitioner's goods are capital goods and in view of definition of "goods" u/s 2(21) and "capital goods" u/s 2(11) of the Act and the proviso u/s 3(5) refers to "goods" alone, the Respondent is hereby directed to consider the claim of the Petitioner and pass orders within a period of four weeks from the date of receipt of copy of this order in accordance with law. It is open to the Petitioner to file such other material or objection as it deem fit. If and when any such objection is made, the same shall be considered after affording opportunity to the Petitioner. Considering the disputed question as to whether the definition of "goods" will constitutes the scope of proviso to Section 3(5) and with reference to Section 19(3), it is but necessary that the issue has to be left to the authorities to consider the effect of the same.

6. If the Petitioner is aggrieved by the order, it is open to them to resort to the remedies provided for under the Act. On the issues raised, as stated above, it is left to the authorities to consider the same and I do not find any justification to exercise this Court's jurisdiction under Article 226 of the Constitution to interfere with the order passed by the Respondent.

7. With the above observation, the writ petition is disposed of. No costs.