

## **Amendment in the TN VAT Act for rectification of an anomaly given retrospective effect**

In *M/s. Nezone Tubes Limited v. The Assistant Commissioner (CT) [W.P. No. 4176 of 2014 and M.P. No. 2 of 2014 decided on July 14, 2021]* M/s. Nezone Tubes Limited (“the Petitioner”) filed a writ petition on the issue that whether the benefit of Input Tax Credit (“ITC”) is to be extended in respect of the transactions occurred prior to the issue of amendment in the Tamil Nadu VAT Act, 2006 (5 of 2015).

The Petitioner contended that the amendment was effected by way of rectification of an anomaly and therefore, it cannot be construed as a new policy. Thus, the benefit of ITC granted pursuant to the amendment is to be extended so as to cover the transactions took place prior to the insertion of the amendment.

The Hon’ble Madras High Court relied on the case of *Tvl. Bharath Traders v. The Commissioner of Commercial [W.P.(MD)Nos.15103 of 2015 and others dated July 13, 2015]* wherein it was held that Section 8(1) of the Centra Sales Tax Act, 1956 (“the CST Act”) provides the benefit of concessional rate of tax, upon production of a statutory declaration form, to an interstate transaction with a registered dealer, and relating to specified goods. Section 8(2) of the CST Act stipulates that an interstate transaction with an unregistered dealer shall be visited with the same rate of tax as applicable to a domestic transaction involving identical goods. While Section 19(2)(v) of the CST Act extended ITC in respect of the transaction under Section 8(1) *ibid*, the same benefit was unavailable to the identical transaction with an unregistered dealer, taxable in terms of Section 8(2) of the CST Act. Though the benefit of ITC was initially restricted as an inducement to dealers to transact with registered dealers alone, legislature has broadened, in its wisdom, the grant of benefit of ITC to transactions with unregistered dealers as well, albeit in 2015. Having taken such a decision in principle, there is no rhyme or reason to restrict the benefit only from the date of substitution. Such restriction would discriminate against transactions under Section 8(2) *ibid* for the prior period, apart from leading to a dichotomy in the manner in which transactions in terms of Section 8(2) *ibid* pre and post April 1, 2015 are assessed to tax.

Since the substitution in the present case only seeks to set right an anomaly it necessarily has to be effective from the date of inception of the Tamil Nadu VAT Act, 2006 (5 of 2015) itself, retrospectively. Allowed the petition.

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