IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVI CHANDRA BAABU

W.P.No. 5259 of 2017
&
WMP.No.5580 of 2017

M/s.Shravan Engineering Enterprises Pvt. Ltd.,
rep. by its Director Mr.N.Sudarsanam,
No.37/16, K.B.Dasan Road,
Alwarpet,
Chennai-600 018. .. Petitioner

Vs

1. The State of Tamil Nadu
rep. by its Secretary,
Commercial Taxes Department,
Fort.St.George, Chennai.

2. The Assistant Commissioner (CT) (FAC),
Alwarpet Assessment Circle,
Chennai-600 028. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in TIN/33120760554/2014-15 and quash the order dated 31.01.2017 passed therein and further direct the 2nd respondent not to apply Sec.2(1) of the Tamil Nadu Value Added Tax (Fifth Amendment) Act, 2013 to the petitioner herein inasmuch as the petitioner is a manufacturer of goods in the State of Tamil Nadu.

For Petitioner : Mr.C.Sivasubramanian
For RR 1 & 2 : Mr.S.Kanmani Annamalai, AGP(T)

ORDER

The petitioner is aggrieved against the order of assessment passed by the second respondent dated 31.01.2017, only insofar as the ITC reversal made under Section 19 (2)(5) of the TNVAT Act 2006 alone is concerned. The learned counsel appearing for the petitioner submitted that the assessment order made in respect of other heads namely, under Section 19

(5) (C) and 19 (5) (a) of the TNVAT Act 2006, the petitioner is not having any grievance. Therefore, he submitted that as the issue with regard to the reversal of ITC under Section 19(2) (5) has already been considered by this Court in W.P.No.7969 of 2014 dated 06.02.2017, he prayed for granting similar relief in this writ petition also.

2.Mr.S.Kanmani Annamalai, learned Additional Government Pleader(T) for the respondents is not disputing the above said contention of the petitioner and submitted that insofar as the ITC reversal under Section 19 (2) (5) of the TNVAT Act is concerned, the said issue is covered by the decision made in WP.No.7969 of 2014 dated 06.02.2017.

3.I myself has considered the similar issue in WP.No.5630 of 2017 dated 07.03.2017, wherein, in paragraph No.4, it is observed as under:

> ''this writ petition is allowed and the impugned assessment order insofar as the reversal of ITC under Section 19(2)(v) alone is set aside. Consequently, the matter is remitted back to the respondent for considering the above said issue afresh in the light of the order passed in W.P.No.7969 of 2014 dated 06.02.2017. It is made clear that in respect of other aspects of the impugned assessment order this court has not gone into the same and expressed any view. Hence, insofar as those issues not considered in this writ petition are concerned, it is for the petitioner either to comply with or to challenge the same before the Appellate Authority in the manner known to law. The respondent shall consider the issue which has been remitted back to him herein and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. If personal hearing is required by the petitioner, it is open to him to make such request in writing and if any such request is made, the respondent shall consider the same and pass orders after giving him an opportunity of hearing. No costs. Consequently, connected miscellaneous petition is closed.

4.Considering the above said circumstances, the writ petition is allowed and the matter is remitted back to the second respondent for considering the above said issue afresh in the light of the order passed in W.P.No.7969 of 2014 dated 06.02.2017. It is made clear that in respect of other aspects of the impugned assessment order this court has not gone into the same and expressed any view. The second respondent shall consider the issue which has been remitted back to him herein and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. If personal hearing is required by the petitioner, it is open to them to make such request in writing and if any such request is made, the respondent shall consider the same and pass orders after giving him an opportunity of personal hearing. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To
1. The Secretary,
Commercial Taxes Department,
Fort.St.George, Chennai.

2. The Assistant Commissioner (CT) (FAC),
Alwarpet Assessment Circle,
Chennai-600 028.

+1 cc to Mr.P.Rajkumar,advocate,sr.17247

+1 cc to Spl.Govt.Pleader,sr.17277.

ks(co)
krd 11/4

WP.No. 5259 of 2017