IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No. 8401 of 2017 &
W.M.P.Nos.9193 & 9194 of 2017

M/s.Amalgamations Repco Ltd.,
Rep. by its General Manager (Finanace),
Mr.C.B.Mahesh, "J" Gardens, GNP Road,
Ponniammanmedu, Chennai – 600 010. ... 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),
Madhavaram Assessment Circle,
170, GNT Road, Puzual Camp,
Chennai – 600 066.

3.The Appellate Deputy Commissioner
Commercial Tax Chennai (North),
Greams Road, Chennai – 600 006. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to TIN 33881080042/2014-15 and quash the order dated 10.03.2017 passed therein by the second respondent and direct the second respondent to allow Input Tax

Credit (ITC) as claimed by the petitioner under Section 19(2)(ii) of the TNVAT Act, 2006 to the extent of Rs.81,58,729/-.

For Petitioner : Mr.R.Venkatanarayanan, for
Mr.Subbaraya Aiyar

For Respondents : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mr.R.Venkatanarayanan, learned counsel representing Mr.Subbaraya Aiyar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondents. With the consent on either side, this writ petition itself is taken up for disposal.

2.The petitioner, a public limited company registered as a dealer on the file of the second respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 ("TNVAT Act" in short), is engaged in the manufacture of AMREP clutch products. The order impugned in this writ petition is an order of assessment under the TNVAT Act for the year 2014-15. The only issue which arises for consideration is as regards reversal of the Input Tax Credit by referring to Section 19(2)(v) of the TNVAT Act. While submitting objections to the revision notice dated 15.07.2016, the petitioner among other things pointed out that there is a decision of this Court holding that reversal of Input Tax Credit need not be done in respect of manufacturing companies. However, the petitioner did not give the full details of what is the judgment of this Court etc.

3.In the light of the same, the respondent completed the assessment holding that the averments made by the petitioner is vague and not acceptable. Subsequently, it appears that the petitioner took legal advice and then filed objections under Section 84 of the Act along with, which they enclosed a copy of the judgment placed in the case of ***M/s.Everest Industries Limited Vs. The State of Tamil Nadu and another*** in ***W.P.No.7969 of 2014*** dated 06.02.2017 reported in ***(2017) 100 VST 158 (Mad)***.

4.The petitioner is to be partly blamed for having invited such an order of assessment as their objections dated 08.08.2016 and 01.09.2016 referring to the decision of this Court in the case of ***M/s.Everest Industries Limited*** (supra) was absolutely vague, in as much as it did not refer to what is the relevant particulars of the case and what was the decision. Considering the size of the organization, viz., the petitioner, it is rather surprising that such a vague reply was sent to the respondents.

5.Be that as it may, on obtaining proper legal advice, the petitioner has submitted their objections under Section 84 of the Act to revise the assessment. This application is still pending and with these facts, the petitioner is before this Court challenging the order of assessment.

6.The learned Assessing Officer in his written instructions to the learned Special Government Pleader (Taxes) dated 19.06.2017 has been magnanimous to state that the petitioner did not bring to his notice the judgment dated 06.02.2017 in the case of ***M/s.Everest Industries Limited*** (supra) (i.e.) and if the judgment was produced, he would have considered the same and examined its applicability to the facts of the petitioner's case.

7.The question which arose for consideration in the case of ***M/s.Everest Industries Limited*** (supra) pertains to the interpretation of proviso to Section 19(2)(v) of the TNVAT Act and this Court after elaborately hearing the counsel on either side held as follows:

> *"A plain reading of the provisions of Sub-Sections (1) and (2) of Section 19 of the 2006 Act would show that, as long as specified goods, which suffer tax are used for any of the purposes set out in clauses (i) to (vi) of Sub-Section (2) of Section 19, the dealer should be able to claim the input-tax credit, with a caveat in so far as clause (v) is concerned encapsulated in the proviso*

> *to Section 19(2) of the 2006 Act. Therefore, the limitation provided in the proviso would apply only vis-a-vis the purpose specified in clause (v) and not qua other purpose set out in clauses (i) to (iv) and (vi) of Section 19(2) of the 2006 Act."*

8.Thus, the law having been settled, the above decision would bind the respondents as well as the State of Tamil Nadu. The learned Government Advocate appearing for the respondents submitted that as against the decision in the case of ***M/s.Everest Industries Limited Vs. The State of Tamil Nadu and another***, writ appeal has been preferred in W.A.SR.No.30184 of 2017. However, I have been informed that the writ appeal is yet to be numbered and the papers were returned for compliances and it is in the process of being re-presented. The settled legal position is that mere pendency of an appeal would not amount to staying of the order passed by the lower Court or the lower authority. In the instant case, the appeal is yet to be numbered. Thus, as on date, the law laid down in ***M/s.Everest Industries Limited*** (supra) holds the field.

9.For the above reasons, this Court is inclined to exercise its jurisdiction under Article 226 of the Constitution of India and interfere with the order of assessment and direct the respondents to re-do the assessment after taking note of the legal position laid down in ***M/s.Everest Industries Limited Vs. The State of Tamil Nadu and another*** supra.

10.For the above reasons, this writ petition is allowed, the order of assessment is set aside and the matter is remanded to the respondents for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner, take note of their submissions and re-do the assessment in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

17.08.2017

Index:Yes/No
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To

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T.S.SIVAGNANAM, J.

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