IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.13744 of 2017

M/s. ESAB India Ltd,
Rep. by Vice President - Finance
No.13, 3rd main road,
Ambattur Industrial Estate,
Chennai - 600 058. .. Petitioner

Vs.

The Assistant Commissioner (CT)
Pattravakkam Assessment Circle
127, II Floor, Yadhaval Street,
Padi, Chennai - 600 050 .. Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari Mandamus, to call for the records of the respondent in TIN/33221322323/2014-15 and quash the proceedings dated 20.04.2017 passed therein and further direct the respondent to grant refund of Rs.1,59,12,333/- being the input Tax Credit reversed u/s. 19(2)(V) of the TNVAT Act 2006 for the period from 01.04.2014 to 31.03.2015.

For Petitioner : Mr.R.L.Ramani
Senior counsel
For Mr.B.Raveendran

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Mr.Venkatesh, learned Government Advocate takes notice for the respondent. By consent of the parties, the main writ petition itself is taken up for final disposal at the admission stage itself.

2. The learned Senior Counsel appearing for the petitioner submitted that the impugned order passed by the respondent in rejecting the application filed under Section 84 of the TNVAT

Act, is erroneous, as the respondent has not considered the scope of the order passed in Everest Industries Limited -v- State of Tamil Nadu & another reported in [2017] 100 VST 158 (Mad). He further submitted that the respondent has also erroneously found that the petitioner was not a party in the above said Everest Industries Ltd., case and therefore, his reasoning for not entertaining the application under Section 84 of the TNVAT Act, cannot be sustained. In other words, the learned Senior Counsel submitted that what should have been seen by the respondent is as to whether that the petitioner's case will fall under the scope and ambit of the decision of this Court made in the said Everest Industries Limited case and accordingly, the respondent should have decided the application filed under Section 84 of the TNVAT Act.

3. The learned Government Advocate fairly submitted that the respondent is not justified in refusing to grant the benefit on the reason that the petitioner was not a party before this Court in the above said case of Everest Industries Limited and on the other hand, he ought to have considered the case of the petitioner in the light of the above said decision.

4. Heard both sides.

5. The petitioner seeks reversal of Income Tax Credit under Section 19(2)(v) of the TNVAT Act, which was rejected by the Assessing Authority. However, the petitioner, by relying on the decision of this Court made in the said Everest Industries Limited case arising out of the same issue, filed an application under Section 84 of the Tamil Nadu Value Added Tax, Act for rectification of the mistake and however, the respondent rejected the application by stating the reasons as discussed supra. As rightly pointed out by the learned Senior Counsel, the respondent is not justified in rejecting the claim of the petitioner on the reason that they were not a party before this Court in the above said Everest Industries Limited case. The respondent should have only seen as to whether the case of the petitioner would fall within the scope and ambit of the decision made by this Court in the said case in order to grant the very same benefit to the petitioner also. Likewise, the other reasoning given by the respondent that the said provisions had not been quashed by this Court also cannot be sustained, in view of the fact that in the above said decision, this Court has categorically found as to who are the persons entitled to the benefit under the said provision. Therefore, the respondent has to re-consider the whole issue by applying the said decision to the facts and circumstances of the present case and pass fresh orders.

6. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the respondent to pass fresh orders on the application filed under Section 84 of the TNVAT Act, in the light of the order passed in the said Everest Industries Limited case, after giving due opportunity of hearing to the petitioner. Such exercise shall be done by the respondent within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT)
Pattravakkam Assessment Circle
127, II Floor, Yadhaval Street,
Padi, Chennai - 600 050.

+1cc to Mr.B.Raveendran, Advocate, S.R.No.39911
+1cc to the Special Government Pleader, S.R.No.40000

W.P.No.13744 of 2017

GJII(CO)
CS/14/06/17