IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.9.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.24752 OF 2017 & WMP.NO.26126 OF 2017

Tvl.High Tech Machines, rep.by
its Partner B.Prabhakaran,
Chennai-58. ...Petitioner

Vs

The Assistant Commissioner (CT),
Pattaravakkam Assessment Circle,
127, II Floor, Yadhaval Street,
Padi, Chennai-50. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in TIN No.33151323574/2014-15 dated 31.7.2017 and quash the same as arbitrary and illegal.

For Petitioner : Mr.T.V.Ganesh
For Respondent : Mrs.Narmadha Sampath, SGP

ORDER

Mrs.Narmadha Sampath, learned Special Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. The petitioner is aggrieved by an assessment order dated 31.7.2017 passed by the respondent for the year 2014-15 under the provisions of the State Act.



3. The respondent, on inspection of the assessment file, came to a conclusion that the petitioner sold goods to other State dealers without C Form declarations. Referring to Section 19(5)(c) of the State Act, it was stated that no input tax credit can be allowed on the purchase of goods sold as such or used in the manufacture of other goods sold in the course of Inter-State trade or commerce falling under Sub-Section (2) of Section 8 of the Central Act. Therefore, the respondent proposed to reverse the input tax credit for the sales made without C

Form declarations. It was further stated that the petitioner had effected Inter-State sales against C Forms to the tune of Rs.5,68,25,597/- and that the goods used in such Inter-State sales is eligible for input tax credit only in excess of 3% as per Section 19(2)(v) of the State Act. It was also proposed to reverse the input tax credit under Section 19(2)(v) of the State Act and the notice in that regard was issued to the petitioner on 22.6.2017.

4. It is admitted by the petitioner that they did not file their objections. But, they would state that their staff went in person to the office of the respondent, but could not meet the respondent.

5. However, there is no proof to show that any representative of the petitioner visited the office of the respondent to submit their objections. Therefore, the respondent cannot be faulted with for having confirmed the proposal in the notice dated 22.6.2017.

6. However, considering the fact that in the case of Everest Industries Limited Vs. State of Tamil Nadu [reported in (2017) 100 VST 158], it has been held that reversal of input tax credit under Section 19(2)(v) of the State Act is not applicable to manufacturers.

7. The petitioner would rely upon the said decision and submit that an opportunity may be granted to the petitioner to go before the Assessing Officer.

8. The learned Special Government Pleader for the respondent would submit that against the decision in Everest Industries Limited, the State has preferred writ appeals and the writ appeals are in the process of being numbered.

9. It is admitted that the writ appeals are yet to be numbered and they are in SR stage. The settled legal principle being that mere pendency of an appeal will not operate as a stay of the order or judgment. In the instant case, the appeals filed by the State are yet to be numbered. Therefore, the said decision in Everest Industries Limited holds the field. For such a reason, this Court is inclined to grant one more opportunity to the petitioner to go before the Assessing Officer.

10. Accordingly, the writ petition is disposed of by directing the petitioner to treat the impugned proceedings as a show cause notice and submit their objections within a period of 15 days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall consider the same, afford an opportunity of personal hearing and redo the

assessment in accordance with law. While doing so, the respondent shall take note of the law laid down by this Court in the case of Everest Industries Limited. No costs. Consequently, the above WMP is closed.

Sd/-
Asst.Registrar (CS III )

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner (CT), Pattaravakkam Assessment Circle, 127, II Floor, Yadhaval Street, Padi, Chennai-50.

+1cc to M/S.P.R.Kumar, Advocate Sr. 67262
+1cc to the Special Government Pleader Sr. 67672

WP.No.24752 of 2017&
WMP.No.26126 of 2017

GMI(CO)
VR(12/10/2017)