IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.25040 of 2017
and
W.M.P.No.26440 of 2017

M/s.The Standard Chemical Co.
Private Ltd.,
Rep. by its Director
Kushagra Singhania ... Petitioner

Vs

The Assistant Commissioner (CT)
Pattravakkam Assessment Circle,
No.127, 2nd Floor, Yadhaval Street,
Padi, Chennai 600 050. ... Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records on the file of the respondent in TIN: 33671360051/2014-15 dated 28.08.2017 and quash the same as illegal, contrary to the provisions of the Act and principles laid down in the case of Everest Industries Ltd., reported in 100 STC 158.

For Petitioner : Mr.T.Pramodkumar Chopda

For Respondent : Mrs.S.Kanmani Annamalai,
Additional Government Pleader

O R D E R

Heard Mr.T.Pramodkumar Chopda, learned counsel for the petitioner and Mrs.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice for the respondent. With the consent on either side, the writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved by an order passed by the respondent dated 28.08.2017, which is an assessment order under the provisions of the Tamil Nadu Value Added Tax Act, 2006, wherein the petitioner's claim for refund of the reversal of the Input Tax Credit under Section 19(2)(v) of the Act, was rejected.

3. The petitioner placed reliance on a decision of this Court in the case of Everest Industries Ltd., -vs- State of Tamil Nadu and another [reported in (2017) 100 VST 158] and claimed refund. Though the respondent extracted the petitioner's contention in the single line, the respondent stated that the contention cannot be accepted. This is not the manner, in which, an order can be passed by the Assessing Officer. The ratio decidendi of the order in the case of Everest Industries Limited can very well applied to other dealers as well regardless of the quantum of Input Tax Credit, which has been reversed under Section 19(2)(v) of the said Act. In the said decision, this Court has 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 purposes set out in Clauses (i) to (iv) and (vi) of Section 19(2) of the 2006 Act."

4. The learned Additional Government Pleader for the respondent has submitted that as against the decision in the case of Everest Industries Limited, the State has preferred appeal. However, it is candidly submitted that the appeal is yet to be numbered and that it is only in the SR stage.

5. Mere pendency of the appeal cannot be a stay of the order passed in the writ petition. In the instant case, the appeal is yet to be numbered. Therefore, as on date, the decision in the case of Everest Industries Limited holds the field and and therefore the respondent is bound to consider the petitioner's claim.

6. For the above reasons, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for a fresh consideration with a direction to apply

the decision in the case of Everest Industries Limited and consider the claim for refund within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

RNA

To

The Assistant Commissioner (CT)
Pattravakkam Assessment Circle, No.127,
2nd Floor, Yadhaval Street,
Padi, Chennai 600 050.

+1cc to Mr.T.Pramod Kumar Chopda, Advocate, S.R.No.68936

W.P.No.25040 of 2017
and
W.M.P.No.26440 of 2017

CS IV
CA(06/10/2017)