IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P. Nos.16000 to 16004 of 2017
and
W.M.P.Nos.17290 to 17294 of 2017

M/s.R.K.Ganapathy Chettiar,
Rep. by its Partner,
Sri.A.Sankaranarayanan,
138, Muthur Road,
Veeranampalayam, Kangeyam. ... Petitioner in all Wps

Vs

The Assistant Commissioner (CT),
Kangeyam ...Respondent in all Wps

Common Prayer: Petitions filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records of the respondent in TIN : 33233080006/2011-12, 2012-13, 2014-15 and 2015-16 and quash the orders dated 29.5.2017 (in W.P.Nos.16000,16001,16003 and 16004 of 2017) respectively and TIN: 33233080006/2013-14 and quash the order dated 02.06.2017 in W.P.No.16002 of 2017 passed therein.

For Petitioner in all WPs : Mr. B.Raveendran

For Respondents in all WPs : Mr.K.Venkatesh,
Government Advocate

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C O M M O N   O R D E R

Heard Mr.B.Raveendran, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent in all WPs.

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. The petitioner is aggrieved by the orders of assessment dated 29.05.2017 and 02.06.2017 respectively, passed under the provisions of Tamil Nadu Value Added Tax Act, 2006, for the Assessment years 2011-12, 2012-13, 2014-15, 2015-16 and 2013-14.

3. The two issues, which arises for consideration in the matters,are as follows:-

(i) whether the percentage of loss of materials (invisible loss) as computed by the respondent is correct; and

(ii) with regard to effect of Section 19(2)(5) of the Act.

4. So far as the first issue namely "invisible loss" is concerned, this Court, in the case of ***Interfit Techno Products Ltd. Vs.Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another (2015) 81 VST 389 (Mad)*** has considered the same and held that it was the duty of the dealers to

factually establish that the circumstances set out under clauses (i) to (iii) in Section 19(9) were not attracted in their process of manufacture. The assessing authorities were not justified in adopting the uniform percentage, on invisible loss and calling upon the dealer to reverse or refund the input – tax credit availed of to that extent; whether it was invisible loss or whether it was destruction loss or whether it would fall within any one of the parameters specified in sub-section (9) of section 19 of the Act, being a question of fact, had to be established by the dealer when called upon by the authority, with these observations, the matter was remitted back to the Assessing Officer, for fresh consideration with a direction to cause inspection on the factory to and with the manufacturing process and then considering the objections placed by the dealer, take decision in accordance with law.

5. However, in the instant case, such an exercise has not been done. Though on the date when the impugned order was passed, the decision in the case of ***Interfit Techno Products Ltd. Vs.Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another*** was very much available, wherein the impugned order was set aside and the matter was remanded back to submit objections and the assessment was ordered to be re-done.

6. So far as the second issue is concerned, the Learned counsel appearing for the respondent submitted that writ appeals have been preferred by the State, against the order in the case of ***Everest Industries Limited Vs. State of Tamil Nadu And***

Another, and the appeals are yet to be numbered.

T.S.SIVAGNANAM,J.

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7. Be that as it may, as on date, the writ appeals filed by the state challenging the correctness of the decision in ***Everest Industries Limited Vs. State of Tamil Nadu And Another***, are yet to be numbered and mere pendency of such appeals cannot operate as stay of orders in ***Everest Industries Limited Vs. State of Tamil Nadu And Another***. Therefore as on date, the said order holds good. Thus, on the second aspect also, the assessment requires to be re-done.

8. Thus, for the above reasons, the impugned orders are set-aside and the matters are remitted back to the respondent, for fresh consideration, with a direction to the petitioner to submit additional objections, after which, the respondent shall afford an opportunity of personal hearing to the petitioner re-do the assessment in accordance with law. The writ petitions are allowed and no order as to costs. Consequently, connected miscellaneous petitions are closed.

18.09.2017

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Index:yes/No
Internet:yes
Speaking order/Non speaking order

To
The Assistant Commissioner (CT),

Kangeyam

W.P. No.16000 to 16004 of 2017