

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.16313 of 2017
and
W.M.P.No.17644 of 2017

M/s.Chennai United Metal Industries Private Limited,
represented by its Director,
Mr.R.Jitendra Kumar Goel,
Survey No.1002/1019, K.S.Road,
Ketnamalle Village, Sirupuzhal Pettai,
Gummidipoondi Taluk,
Thiruvallur District. .. Petitioner

Vs

The Commercial Tax Officer,
Gummidipoondi Assessment Circle,
38, GNT Road, Second Floor,
Gummidipoondi. .. Respondent

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33451705686/2014-15 dated 01.06.2017, quash the same and direct the respondent to consider the objections dated 28.02.2017.

For Petitioner : Mr.R.Kumar

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader (Taxes)

ORDER

Heard Mr.R.Kumar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), appearing for the respondent.

2.With the consent of the learned counsel on either side, the main writ petition itself is taken up for final disposal.

3.The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 ("TNVAT Act" in short) and Central Sales Tax Act, 1956 ("CST Act" in short). The petitioner is stated to be the manufacturer and dealer in M.S.Flats, Angles, Channels etc. In this writ petition, the petitioner challenges an order of assessment dated 01.06.2017 for the year 2014-2015, by which the proposal made in the notice dated 16.02.2017 proposing to reverse the input tax credit has been confirmed. This notice is a fallout of the direction issued in W.P.No. 23075 of 2016 dated 02.11.2016 in which the petitioner challenged an order of assessment dated 09.05.2016 under the CST Act for the year 2014-2015. Under the guise of complying with the said direction, the respondent has issued a notice dated 06.02.2017 to the petitioner

proposing to reverse the input tax credit under Sections 19(2)(v) and 19(5)(c) of the TNVAT Act. The petitioner submitted their objections on 28.02.2017 reiterating their earlier objections dated 03.01.2017 and with regard to the proposed reversal of input tax credit under Section 19(2)(v), the petitioner placed reliance upon the decision of this Court in the case of **Everest Industries Limited v. State of Tamil Nadu and another, reported in [2017] 100 VST 158 (Mad)**. With regard to the proposed reversal under Section 19(5)(c) is concerned, the petitioner gave factual explanation and requested to drop the proposal under both the heads. Along with the objections dated 28.02.2017, the petitioner enclosed the following documents:

1. Interstate Raw Material Stock Register.
2. Interstate Finished Goods Stock Register.
3. Within State Raw Material Stock Register.
4. Within State Finished Goods Stock Register.
5. Process Flow Chart.
6. Interstate sales invoice copies and purchase invoice copies.
7. Sales Details:
 - a) Interstate sales 2% with C Form.
 - b) Interstate Sales 5% without C Form.
 - c) Within State Sales 5% (local sales).
8. Purchase Details:
 - a) Local Purchase @ 5% monthwise details.
 - b) Interstate Purchase @ 2%.

9. Closing Stock Value and quantity as on 31.03.2015.

4. The respondent, on receipt of the objections, after affording an opportunity of personal hearing, completed the assessment and passed the impugned order. As pointed out earlier, reversal of input tax credit was proposed to be made under Sections 19(2)(v) and 19(5)(c) and so far as the aspect regarding reversal of input tax credit under Section 19(2)(v) is concerned, the matter is now covered by the decision of this Court in **Everest Industries Limited v. State of Tamil Nadu and another** (supra). Curiously, the respondent has proposed to express a contrary view than what has been expressed in the said decision. The interpretation sought to be made by the respondent to get over the decision in Everest Industries Limited's case, is unacceptable. The interpretation of a judgment can be given by stating that it will not apply to the facts and circumstances of the case, but observation or finding cannot be given by a lower authority interpreting the judgment, as if it is an appellate forum. Therefore, the finding of the respondent stating that each case has to be devised on its own merits and circumstances, will not apply to the facts and circumstances of the present case, because the issue which arises for consideration in Everest Industries Limited's case, is pertaining to

interpretation of the proviso to Section 19(2)(v) of the TNVAT Act. In the said decision, it has been held that a plain reading of the provisions of sub-sections (1) and (2) of Section 19 of the TNVAT 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 TNVAT Act, and 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 TNVAT Act.

5. Thus the above decision binds the respondent-State since as on date, the order has not been set aside or modified or reversed by the Division Bench. Though it is submitted that writ appeal has been filed in W.A.SR.No.30184 of 2017, it appears that papers have been returned and it is under the process of being re-presented. Mere pendency of the appeal will not amount to stay of the order of the lower Court or the lower authority. Therefore, as on date, the order passed by this Court in M/s.Everest Industries Limited v. State of Tamil Nadu (supra), holds the field. Therefore, the finding rendered by the respondent with regard to reversal under Section 19(2)(v), as made in

the impugned order, has to be set aside.

6. With regard to reversal under Section 19(5)(c), the petitioner has given factual explanation and their case is, immediately after manufacture, the value cannot be ascertained, as the market is fluctuating and only after the manufacture is completed, the value of the manufactured goods could be ascertained. But the petitioner has furnished all the other values. Further, the petitioner has also furnished the details of the closing stock value as on the relevant date item-wise and only the value that was not furnished is for the manufactured goods, which according to the petitioner could not be done immediately. This aspect has not been properly dealt with by the respondent while completing the assessment and the reason assigned for not considering the Stock-cum-Production Statement is not tenable. Therefore, the reversal made under Section 19(5)(c) also calls for interference.

7. For all the above reasons, the writ petition is allowed and the impugned order is set aside and the matter is remitted to the respondent for fresh consideration who shall take note of the observations of this Court in the decision made in Everest Industries Limited's case (supra), apply the same to the petitioner's case and

redo the assessment under Section 19(2)(v) and also under Section 19(5)(c) of the TNVAT Act. This direction has to be complied with by the respondent within a period of twelve weeks from the date of receipt of a copy of this order. The petitioner shall be afforded an opportunity of personal hearing and the petitioner is at liberty to file additional documents / objections etc. No costs. Consequently, the connected miscellaneous petition is closed.

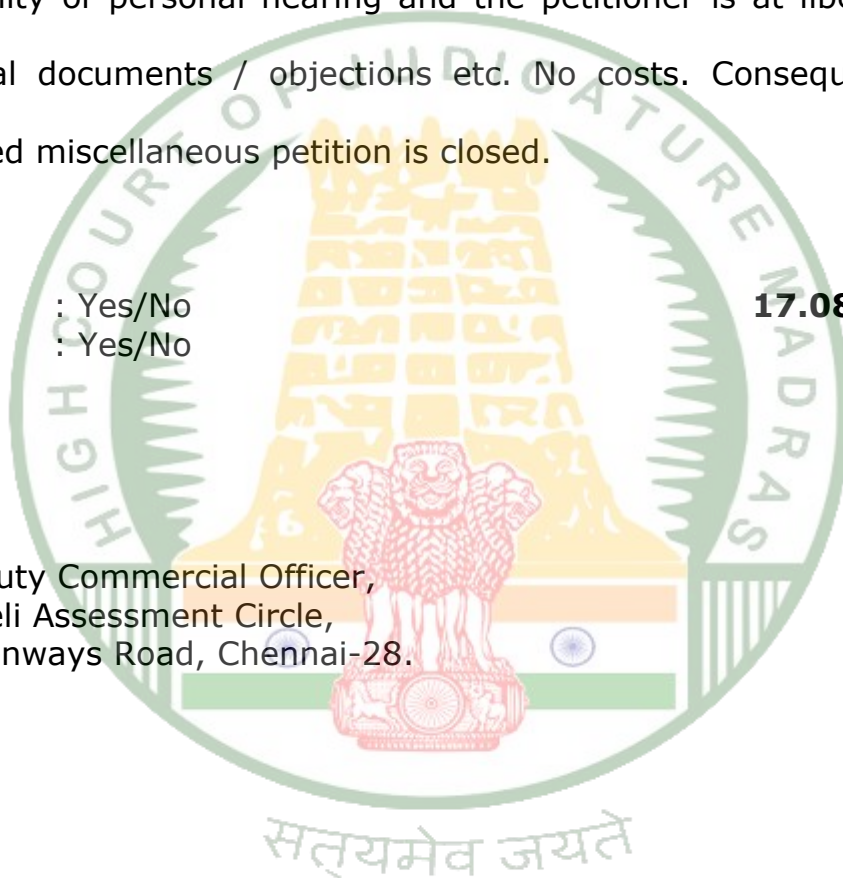
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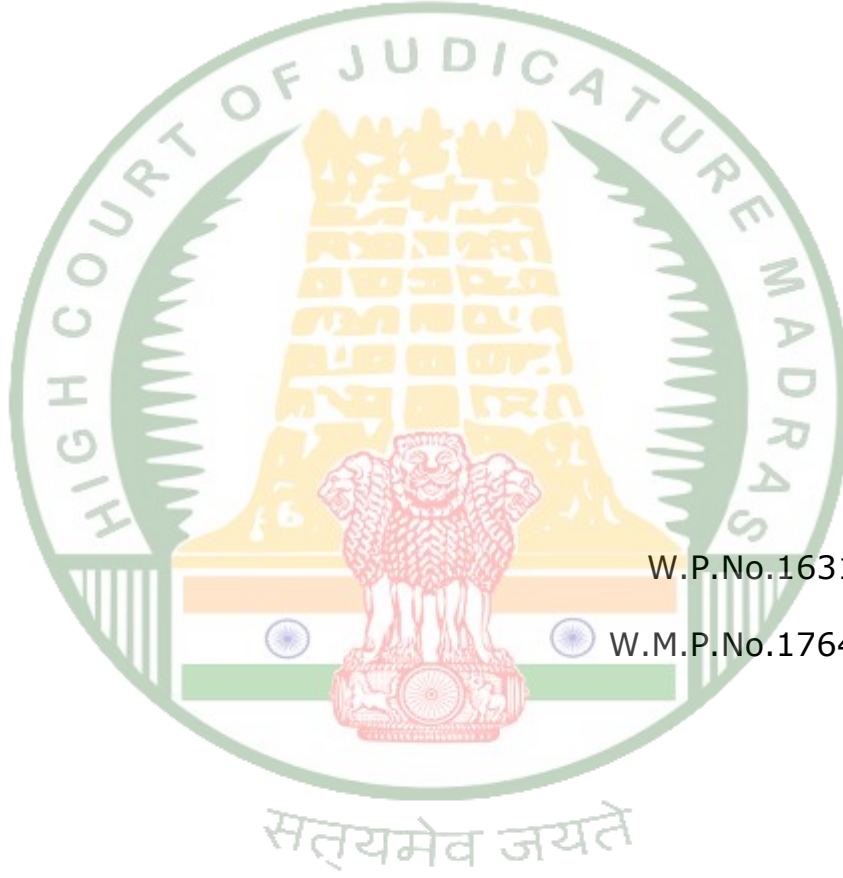
The Deputy Commercial Officer,
Mandaveli Assessment Circle,
46, Greenways Road, Chennai-28.



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T.S.SIVAGNANAM, J.

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