IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.26920 & 26921 of 2017 & W.M.P.Nos.28696 & 28697 of 2017

Tvl.Vishnu Paper Products Pvt. Ltd.,
Rep. by its Authorised Signatory,
Semangalam Post, Vanur Taluk,
Villupuram District. ... Petitioner in both W.Ps.

Vs.

The Commercial Tax Officer,
Tindivanam. ... Respondent in both W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, to call for the records of the respondent in order in TIN/33164721333/2013-14 & 2014-15 respectively, dated 31.07.2017 and quash the same in so far as it relates to reversal of Input Tax Credit under Section Proviso to Section 19(2)(v) of the Tamil Nadu Value Added Tax Act, 2006 and further direct the respondent not to apply Section 2(1) of the Tamil Nadu Value Added Tax (Fifth Amendment) Act, 2013 to the petitioner herein in as much as the petitioner is a manufacturer of goods in the State of Tamil Nadu.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mrs.Narmadha Sampath, Special Government Pleader

C O M M O N O R D E R

Heard Mr.Adithya Reddy, learned counsel appearing for the petitioner and Mrs.Narmadha Sampath, learned Special Government Pleader appearing for the respondent. With consent on either side, these writ petitions are taken up for final disposal.

2.The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short "TNVAT Act") and Central Sales Tax Act, 1956 (in short "CST Act") has filed these writ petitions challenging the assessment orders dated 31.07.2014 for the assessment years 2013-14 & 2014-15, only with regard to reversal of input tax credit under Proviso to Section 19(2)(v) of the TNVAT Act. The petitioner was issued revision notice dated 13.06.2017, pursuant to the inspection conducted in the business premises of the petitioner by the Enforcement Wing officers on several dates in November 2016. As the petitioner was called upon to submit their objections to the revision notices. The petitioner failed to avail the opportunity, the assessing officer completed the assessment and passed the assessment orders dated 31.07.2017 (impugned orders). After, the petitioner came to know about the decision of this Court, in the case of Everest Industries vs. State of Tamil Nadu, dated 06.02.2017, they had filed rectification petitions under Section 84 of the TNVAT Act dated 23.08.2017, stating that Section 19(2)(v) of the TNVAT Act has no application to the case on hand. These applications have been rejected by order dated 05.09.2017. The reason assigned by the respondent is by stating that the petitioners have not purchased waste papers alone for use in manufacture and from the returns filed in Form I under the CST Act, he is not able to ascertain that all sales are made against Form C out of the products manufactured by the petitioner to apply the ratio laid down in the case of Everest Industries (supra).

3.The petitioner's contention is that at the first instance, when the respondent completed the assessment, he had absolutely no doubt with regard to sales under Section 8(1) of the CST Act. However, without giving any opportunity to the petitioner, this finding has been recorded, in the order dated 05.09.2017. It is further submitted that the petitioner is in possession of all records and if an opportunity is granted, they would be able to demonstrate before the assessing officer that they are entitled to the benefit of the order in the case of Everest Industries (supra).

4.Considering the above facts and circumstances, this Court is inclined to give one more opportunity to the petitioner to go before the assessing officer and produce necessary records. Accordingly, the impugned orders dated 31.07.2017 are set aside and the matter is remanded to the respondent for fresh consideration. The respondent shall fix a date for personal hearing, on which date, the petitioner should produce adequate proof as to how they are entitled to the benefit of the order in Everest Industries (supra). After which, the respondent shall pass fresh orders on merits and in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar

abr

To

The Commercial Tax Officer,
Tindivanam.

1 cc to Mr.Adithya Reddy, Advocate, Sr. 73894
1 cc to Spl.G.P. (Taxes), Sr. 74131

W.P.Nos.26920 & 26921 of 2017

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