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.Nos.16890 and 16891 of 2017
and
W.M.P.Nos.18356 and 18357 of 2017

Tvl.ESGI Garments Ltd.,
rep.by its Managing Director Mr.M.Rafiur Rahman,
No.46, Kattur Sadayappan Street,
Periamet, Chennai-600 003. .. Petitioner in both the W.Ps.

Vs

The Assistant Commissioner (CT),
Periamet Assessment Circle,
No.10, Palaniyappa Maligai,
1st Floor, Greams Road,
Chennai-600 006. .. Respondent in both the W.Ps.

W.P.No.16890 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN 33350662603/2013-2014 dated 30.01.2017 and quash the same as illegal and against the judgment reported in 2017 [100] VST 158 [Everest Industries Ltd Case) to apply the proviso to Section 19(2)(v) of the Tamil Nadu Value Added Tax Act to the petitioner herein in as much as the petitioner is a manufacturer of goods in the State of Tamil Nadu.

W.P.No.16891 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN 33350662603/2014-2015 dated 17.03.2017 and quash the same as illegal and against the judgment reported in 2017 [100] VST 158 [Everest Industries Ltd Case) to apply the proviso to Section 19(2)(v) of the Tamil Nadu Value Added Tax Act to the petitioner herein in as much as the petitioner is a manufacturer of goods in the State of Tamil Nadu.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mr.K.Venkatesh,
Government Advocate

COMMON ORDER

Heard Mr.D.Vijayakumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent.

2.With the consent of the learned counsel on either side, the writ petitions are taken up for final disposal.

3.The petitioner is a manufacturer and dealer in leather garments and an assessee on the files of the respondent registered 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 challenge in these writ petitions are the assessment orders passed by the respondent for the years 2013-14 and 2014-15 under the TNVAT Act. The petitioner was served with notice dated 21.11.2016 for the assessment year 2013-2014 calling upon the petitioner amongst other things, to reverse the input tax credit by referring to the amended provision of Section 19(2)(v) of the TNVAT

Act. The petitioner submitted their reply dated 28.11.2016 agreeing to reverse the input tax credit which was availed, pursuant to which an order was passed on 30.01.2017 by which the respondent while referring to the stand taken by the petitioner agreeing to reverse the input tax credit, accepted the stand of the petitioner that the correct total sales turnover should be only Rs.3,84,97,127/-. The petitioner did not prefer any appeal as against the order of assessment dated 30.01.2017. After the assessment was passed, the judgment in **Everest Industries Limited v. State of Tamil Nadu and another, reported in [2017] 100 VST 158 (Mad)** was rendered on 06.02.2017. The question which fell for consideration was with regard to interpretation of the proviso to Section 19(2)(v) of the TNVAT Act. The Court 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.

4.By relying upon the aforementioned decision in Everest Industries Limited, the petitioner submitted an application under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, dated 11.05.2017 and requested to apply the decision and revise the assessment and allow refund of the amount which was reversed by the petitioner. The said application has not been considered and therefore, the petitioner is before this Court.

5.For the assessment year 2014-2015, the facts are identical, instead the date of issuance of the revision notice is 05.08.2016, the petitioner's reply is dated 12.08.2016 and the order of assessment was passed on 17.03.2017. It is submitted that the assessment order for the year 2014-2015 was passed after the order was passed in the case of Everest Industries Limited (supra).

6.The learned Government Advocate appearing for the respondent would submit that as against the order in Everest Industries Limited (supra), the respondent / State has preferred an appeal before the Hon'ble Division Bench in W.A.SR.No.30184/2017 and the appeal is yet to be numbered and it appears that the appeal papers have been returned for certain compliance and it is being re-presented. The well settled legal position is that mere pendency of an appeal will not amount to stay of the order passed by the lower Court or the lower authority. In the instant case, the appeal is yet to be numbered and therefore, as on date, the respondent State is bound by the decision rendered by this Court in Everest Industries Limited v. State of Tamil Nadu and another (supra).

7.For the above reasons, the writ petitions are disposed of by directing the respondent to consider the petitioner's representations dated 24.02.2017 and 11.05.2017 for the assessment year 2013-2014 and the representations dated 05.05.2017 and 11.05.2017 for the assessment year 2014-2015, afford an opportunity of personal hearing, consider the petitioner's objections, take note of the decision in Everest Industries Limited v. State of Tamil Nadu and another (supra) and redo the assessments in accordance with law. This direction has to be complied with within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes/No **17.08.2017**
Internet : Yes/No

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T.S.SIVAGNANAM, J.

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To

The Assistant Commissioner (CT),
Periamet Assessment Circle,
No.10, Palaniyappa Maligai,
1st Floor, Greams Road,
Chennai-600 006.

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of 2017

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