

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2017

Coram

The Hon'ble Mr. Justice T.S. Sivagnanam

Writ Petition No.18462 of 2017

Yenkay Industries
rep. by its Managing Partner,
M. Nagappan

...Petitioner

Vs.

The Assessment Commissioner (CT)
Pattaravakkam Assessment Circle,
No.5, 1st Floor High Court Colony,
Villivakkam, Chennai -600 049.

...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, to direct the respondent to dispose of the refund application filed and pending before the Respondent in their letter 01.06.2017, filed on 05.06.2017, for refund of tax amount of Rs.98,658/- for the year 2013-14, and Rs.3,19,974/- for the year 2014-15, in total, amounting to Rs.4,18,632/-, and order for refund in Form-P along with Refund Voucher for the same as per Rule 8 (6) of TNVAT Rules, 2007, in a time bound manner for refund of tax.

For Petitioner : Mr. N. Murali

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

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

2. In this Writ Petition, the petitioner seeks for issuance of a Writ of Mandamus, to direct the respondent to dispose of their refund application dated 01.06.2017, filed on 05.06.2017, for refund of tax amount of Rs.98,658/- for the year 2013-14, and Rs.3,19,974/- for the year 2014-15, in total, amounting to Rs.4,18,632/-, and order for refund in Form-P along

with Refund Voucher for the same as per Rule 8 (6) of TNVAT Rules, 2007, in a time bound manner.

3. This Court, on earlier occasion, considered the similar prayer, in the case of (M/s. CBC Fashion (Asia) Pvt. Ltd., rep. by its Managing Director Vs. The Assistant Commissioner (CT) Bazaar Assessment Circle, Tirupur.) in W.P.Nos.18661 of 2017 and disposed of the said Writ Petition, on 17.08.2017, in the light of the decision of this Court, in (M/s.Everest Industries Ltd., Vs. State of Tamil Nadu, rep. by Secretary and another) reported in (2017) 100 VST 158 (Mad) and the order passed in W.P.No.18661 of 2017 is extracted hereinbelow:-

" Heard Mrs. Hema Murali Krishnan, the learned counsel appearing for the petitioner and Mr. S. Kanmani Annamalai, the learned Additional Government Pleader for the respondent.

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 (henceforth, referred to as TNVAT Act) and Central Sales Tax Act, 1956 is before this Court, seeking for issuance of a Writ of Mandamus, to direct the respondent to consider their letter/representation, dated 04.07.2017, and to refund the amount of input tax credit (ITC) reversed by the petitioner, under proviso to Section 19 (2) of TNVAT Act, 2006 by applying the decision of this Court, in the case of (M/s. Everest Industries Ltd., Vs. State of Tamil Nadu, rep. by Secretary and another) in W.P.No.7969, 10585 of 2014, etc., (batch) dated 06.02.2017.

3. In the decision referred to supra, a batch of cases was heard by the Court, involving interpretation of proviso to Section 19 (2) (ii) of TNVAT Act. The Court, after elaborately considering the submissions made on behalf of the dealers as well as Revenue, held as follows:-

"" 20. A careful reading of Section 19 would show that a dealer is entitled to claim ITC in respect of tax suffered inputs, which are specified in the First Schedule, and are purchased within the State from a registered dealer, and

thereafter, are used for the purpose set out in clauses (i) to (vi), as delineated in sub-section (2) of Section 19 of the 2006 Act.

20.1 The proviso to sub-section (2) of Section 19 limits the availment of ITC by providing that ITC shall be allowed in excess of 3% of the tax for the purposes specified in clause (v). Clause (v), if read with sub-section (2) of Section 19 would have me conclude that, if, an assessee were to purchase taxable goods specified in the First Schedule, which were sold in the course of Inter-State Trade or Commerce against declarations made in form 'C', an assessee would be allowed ITC only in excess of 3% of the tax paid on such purchases.

20.2 Therefore, there is, to my mind, nothing in the proviso, which will have me come to the conclusion that, it is attracted to any of the other clause referred to in sub-section (2) of Section 19 of the 2006 Act.

20.3 A plain reading of the provisions of sub-section (1) and sub-section (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 assessee should be able to claim the ITC, with a caveat in so far as clause (v) is concerned. The caveat being, the limitation, which is 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 clause (i) to (iv) and (vi) of Section 19(2) of the 2006 Act.

20.4 If, that be the conclusion, then, surely, none of the impugned orders can sustain. The fact that, the proviso, on account of erroneous interpretation by the Revenue, was causing difficulties for the manufacturers, is exemplified by the Statement of Objects and Reasons which was set forth, at the time of introduction of Act 5 of 2015.

21. A perusal of the relevant extract of the Statement of Objects and Reasons would show that insertion of the proviso to Section 19(2) of 2006 Act had led to the manufacturing industries located in the State of Tamil Nadu, becoming less competitive as compared to their counterparts in the neighbouring States. The relevant part of the Statement of Objects and Reasons, which sheds light on this aspect of the matter is extracted hereunder, for the sake of convenience:

"In the Budget Speech for the year 2015-2016, among others, the following announcements were made :-

(i) Input tax credit reversal imposed at the rate of 3 per cent on the Inter-State sale of goods as per proviso to Section 19(2)(v) of Tamil Nadu Value Added Tax Act, 2006, which was introduced with effect from 11-11-2013 will be withdrawn henceforth to make the manufacturing industries in Tamil Nadu more competitive with their counterparts in the neighbouring States." "

4. The learned counsel appearing for the petitioner submits that, by applying the law laid down by the Court in the decision referred to supra, it has to be necessarily held that reversal of ITC directed to be paid by the petitioner is not tenable.

5. The learned Additional Government Pleader for the respondent, on the other hand, would oppose the relief sought for by the petitioner, by contending that as against the decision in M/s. Everest Industries Ltd.'s case (supra) the State has preferred Appeals and the same is in Sr Stage, yet to be numbered (as the papers relating to the Appeals have been returned by the Registry for certain compliances).

6. In view of the submission of the learned Additional Government Pleader for the respondent, it appears that the State is in the process of preferring Appeals by representing the Appeal papers and the Appeals are yet to be numbered. The settled legal position being that, mere pendency of the Appeal without interim order will not amount to the grant of stay of the order passed by the Lower Court or Lower Forum. In the instant case, it appears that the Appeals filed by the State are yet to be numbered. Therefore, this Court is inclined to issue appropriate direction in this Writ Petition, however, leaving it open to the respondent to pursue their Appeal in the meantime. A similar relief, was sought for, in the case of (M/s. Abirami Engineering Company Vs. The Assistant Commissioner (CT), Coimbatore) in W.P.Nos.8683 to 8685 of 2017) and the Court disposed of the said Writ Petitions, by a common order, dated 11.04.2017, by directing the representation to be considered on merits and in accordance with law. It is submitted by the learned counsel appearing for the petitioner that the directions issued in those cases has also not been complied with.

7. In the light of the above, this Writ Petition is disposed of, by directing the respondent to consider the petitioner's

letter/representation, dated 04.07.2017, taking note of the decision of the Court in M/s. Everest Industries Ltd.'s case (supra) and pass appropriate orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. No costs."

4. Thus, following the decision rendered by this Court, referred to supra, the present Writ Petition can also be disposed of, on the same lines. Accordingly, this Writ Petition is disposed of, directing the respondent to consider the petitioner's letter/representation, dated 01.06.2017, filed on 05.06.2017, taking note of the decision of the Court in M/s. Everest Industries Ltd.'s case (supra) and pass appropriate orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To

The Assessment Commissioner (CT)
Pattaravakkam Assessment Circle,
No.5, 1st Floor High Court Colony,
Villivakkam, Chennai -600 049.

+1cc to Mr.N.Murali, Advocate sr.60024

+1cc to Government Pleader sr.60169

सत्यमेव जयते
Writ Petition No.18462 of 2017

ss (22/9/2017)

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