

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2017

Coram

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

Writ Petition No.18473 of 2017

M/s. I. M. Gears Pvt. Ltd.,
rep. by its Director

...Petitioner

Vs.

The Assessment Commissioner (CT) (FAC)
Selaiyur Assessment Circle,
Chennai - 600 073.

...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the respondent, in TIN : 33700941140/2014-15, and to quash the proceedings dated 11.07.2017, passed therein and further, to direct the respondent to grant refund of Rs.47,31,123/- being the Input Tax Credit reversed under Section 19 (2) (v) of the TNVAT Act, 2006, during the assessment year 2014-15.

For Petitioner : Mr. P. V. Sudakar
For Respondent : Mr.K.Venkatesh
Government Advocate

ORDER

Heard Mr. P. V. Sudakar, 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 to quash the order passed by the respondent, dated 11.07.2017, whereby the petitioner's application for refund of Rs.47,31,123/- has been rejected and consequently, to direct the respondent to pass orders for refund of the said sum, being the Input Tax Credit reversed under Section 19 (2) (v) of the Tamil Nadu Value Added Tax Act, 2006, for the assessment year 2014-15.

3. This Court, on earlier occasion, considered the similar prayer, in the case of (M/s. Lakshmi Machine Works Ltd., Vs. Deputy Commissioner (CT) and another) in W.P.Nos.18991 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.18991 of 2017 is extracted hereinbelow:

" " Heard Mr.R. Venkataraman, the learned Senior Counsel for M/s. Lakshmi Sriram, the learned counsel appearing for the petitioner and Mr.S. Kanmani Annamalai, the learned Additional Government Pleader for the respondents.

2. The petitioner, who is a registered dealer on the file of the first respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (henceforth, referred to as TNVAT Act) (now dealer under the Central Goods and Services Tax Act, 2017) is before this Court, seeking for issuance of a Writ of Mandamus, to direct the respondents to refund input tax credit reversed for the period November, 2013 to March, 2015 along with interest in the light of the law laid down by 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).

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. The learned counsel further submits that, relying upon the said decision, the petitioner made a representation, dated 20.04.2017, seeking refund, and in response

to the said representation, the first respondent sent a reply on the very same day itself (20.04.2017) stating that they have not received the Official copy of this Court's order and he has made necessary instructions to the Joint Commissioner (CT) Chennai, and Joint Commissioner (Legal), Chennai, and awaiting clarification.

5. The learned Additional Government Pleader for the respondents, 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 respondents, it appears that the State is in the process of preferring Appeals by re-presenting 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 respondents 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 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 respondents to consider the petitioner's

representation, dated 26.04.2017, 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. The above decision rendered by this Court, would squarely extend to the present case, and the only difference in this case is that, the respondent rejected the Application for refund made by the petitioner, by stating that the petitioner is not a party to the decision rendered in M/s. Everest Industries Ltd.'s case (supra). This finding is erroneous, since the petitioner has referred to the ratio decidendi laid down in M/s. Everest Industries Ltd.'s case (supra) they need not be a party to the said decision.

5. In the light of the above, this Writ Petition is allowed, the impugned order is set aside, and the matter is remanded to the respondent for fresh consideration, who shall take note of decision of the Court in M/s. Everest Industries Ltd.'s case (supra) and pass 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(CO)

//True Copy//

Sub Assistant Registrar

sd

To

The Assessment Commissioner (CT) (FAC)
Selaiyur Assessment Circle,
Chennai - 600 073.

+1cc to Mr.P.V.Sudhakar, Advocate SR.No.60057
+1cc to Government Pleader SR.No.60142

Writ Petition No.18473 of 2017

VGII(CO)
GN(21/09/2017)