IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.18975 and 18976 of 2017

M/s.Angel Label Division
rep.by its Kartha of HUF
D.Sachithanantham,
No.32, Parasakthi Kovil Street,
Tirupur. .. Petitioner in both the W.Ps.

Vs

The Assistant Commissioner (CT) (FAC),
Kongunagar Circle,
Tirupur. .. Respondent in both the W.Ps.

W.P.No.18975 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the respondent in TIN 33892442062/2013-14 and quash the proceedings dated 31.05.2017 passed therein in so far as it reverses the ITC u/s.19(2)(v) of the TNVAT Act, 2006.

W.P.No.18976 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the respondent in TIN 33892442062/2014-15 and quash the proceedings dated 31.05.2017 passed therein in so far as it reverses the ITC u/s.19(2)(v) of the TNVAT Act, 2006.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.K.Venkatesh,
Government Advocate

COMMON ORDER

Heard Mr.B.Raveendran, 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 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 engaged in the manufacture of hosiery garments. The petitioner's case is that they purchase inputs from registered dealers within the State of Tamil Nadu on payment of tax under the TNVAT Act and such tax-suffered inputs are used by the petitioner in the manufacture of final products and such final products are sold by the petitioner within the State of Tamil Nadu as a local sale and outside the State on inter-state sale basis. So far as the inter-state sales is concerned, they are supported by Form-C declarations which fall under Section 8(1) of the CST Act attracting tax at the rate of 2% and those not supported by Form-C declarations fall under Section 8(2) of the CST Act.

4.The petitioner is aggrieved by the amendment which was made to Section 19(2) of the TNVAT Act which came into force during November 2013. By virtue of the proviso to Section 19(2), the input tax credit shall be allowed in excess of 3% of tax for the purposes specified in Clause (v). Clause (v) deals with sale in the course of inter-State trade or commerce falling under sub-section (1) of Section 8 of the CST Act. The petitioner's case is that the said amendment does not touch upon the right or permissibility to avail input tax credit vested with the petitioner who use tax suffered goods as inputs in the manufacturing process or in the processing of goods in the State and such restriction with regard to quantum of input tax credit is only with regard to the goods purchased within the State from a registered dealer and sold in the course of inter-State trade or commerce against Form-C declarations. In this connection, the learned counsel for the petitioner seeks to rely 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). Therefore it is submitted that the impugned orders passed by the respondent in so far as it directs reversal of input tax credit under Section 19(2)(v) is erroneous and incorrect and by applying the judgment in the case of Everest Industries Limited v. State of Tamil Nadu and another (supra), the same is liable to be set aside. So far as the reversal of input tax credit under Section 19(5)(a) is concerned, the petitioner is not contesting the claim as the amount involved is a meagre sum. Thus the case of the petitioner solely rests upon the decision in the case of Everest Industries Limited v. State of Tamil Nadu and another (supra).

5.The learned Government Advocate appearing for the respondent would submit that as against the decision in Everest Industries Limited, the Department has preferred an appeal before the Division Bench in W.A.SR.No.30184/2017, however the appeal is yet to be numbered and it appears that the appeal papers have been returned for certain compliance. Therefore, it is his submission that the impugned orders should not be interfered at this stage.

6.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). The issue involved in the said case pertain to interpretation of the proviso to Section 19(2)(v) of the TNVAT Act. The Court, after elaborately hearing the arguments on either side, 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.

7.If the above interpretation is made applicable to the case on hand, then the impugned proceedings in so far as it relates to reversal of input tax credit under Section 19(2)(v) has to be set aside. That apart, the objections filed by the petitioner to the revision notice dated 13.02.2017 has also not been fully and effectively considered while passing the impugned orders. Therefore, this Court is convinced that the assessments require to be redone, more particularly in the light of the decision in Everest Industries Limited v. State of Tamil Nadu and another (supra).

8.Hence, the writ petitions are allowed and the impugned orders are set aside and the matter is remanded back to the respondent for fresh consideration who shall issue notice to the petitioner, hear in person by affording an opportunity of personal hearing, consider the objections filed by the petitioner, 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.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

KM

To

The Assistant Commissioner (CT) (FAC),
Kongunagar Circle,
Tirupur.

+ 1 cc to Mr. Ravendran, Advocate Sr.59161

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of 2017

AR-J
EU 6.09.17