IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.4559 to 4566 of 2015
and
MP.Nos.1 & 2 of 2015 (in each writ petitions)

M/s.Simpson & Co.Ltd.,
Rep.by its Chief Financial Officer
& Company Secretary
861/862, Anna Salai,
Chennai 600 002. ... Petitioner
(in WP.Nos.4559 to 4566 of 2015

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary
Commercial Taxes Department
Fort St.George, Chennai 9

2. The Assistant Commissioner (CT)
Chinthadripet Association Circle
Chennai 6. ... Respondents
(in WP.Nos.4559 to 4566 of 2015

Prayer:

Writ petition No.4559 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in TIN/33590580021/2014-2015-April 2014 and quash the order dated 09.02.2015 passed therein and further direct the second respondent not to apply Sec.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.

Writ petition No.4560 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in TIN/33590580021/2014-2015-May 2014 and quash the order dated 09.02.2015 passed therein and further direct the second respondent not to apply Sec.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.

Writ petition No.4561 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in TIN/33590580021/2014-2015-June 2014 and quash the order dated 09.02.2015 passed therein and further direct the second respondent not to apply Sec.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.

Writ petition No.4562 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in TIN/33590580021/2014-2015-July 2014 and quash the order dated 09.02.2015 passed therein and further direct the second respondent not to apply Sec.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.

Writ petition No.4563 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in TIN/33590580021/2014-2015-August 2014 and quash the order dated 09.02.2015 passed therein and further direct the second respondent not to apply Sec.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.

Writ petition No.4564 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in TIN/33590580021/2014-2015-September 2014 and quash the order dated 09.02.2015 passed therein and further direct the second respondent not to apply Sec.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.



Writ petition No.4565 of 2014 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in TIN/33590580021/2014-2015-October 2014 and quash the order dated 09.02.2015 passed therein and further direct the second respondent not to apply Sec.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.

Writ petition No.4566 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in TIN/33590580021/2014-2015-November 2014 and quash the order dated 09.02.2015 passed therein and further direct the second respondent not to apply Sec.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.R.L.Ramani,
Senior Counsel in all writ petitions

For Respondents: Mr.K.Venkatesh,
Government Advocate
in all writ petitions

C O M M O N O R D E R

All these writ petitions are filed challenging the provisional assessment made in respect of April 2014 - November 2014 of the assessment year 2014-2015.

2. The learned Senior Counsel appearing for the petitioner submitted that the only grievance of the petitioner as against these provisional assessment is that the Assessing Authority has erroneously reversed the Input Tax Credit under Section 19(2)(v) of the Tamil Nadu Value Added Tax Act, 2006, without considering the fact that the petitioner is entitled to such credit in the light of the order passed by this Court in Everest Industries Limited -v- State of Tamil Nadu & another case reported in [2017] 100 VST 158 (Mad). Therefore, he submitted that the Assessing Authority has to re-consider the issue relating to the ITC reversal under Section 19(2)(v) of the TNVAT Act, in the light of the above said order passed by this Court. He further contended that except the said issue viz., ITC reversal under Section 19(2)(v) of the TNVAT Act, the petitioner is not aggrieved against the assessment made on the other issues.

3. The learned Government Advocate is not disputing the fact that the issue regarding the ITC reversal under Section 19(2)(v) of the TNVAT Act is covered by the said decision of this Court reported in [2017] 100 VST 158 (Mad) and therefore, the Assessing Authority can re-consider the said issue once again.

4. Heard both sides.

5. These writ petitions are filed only challenging the ITC reversal under Section 19(2)(v) of the said Act by relying upon the said decision of this Court reported in [2017] 100 VST 158 (Mad). As it is an admitted fact that the said issue is covered by the said decision of this Court, the Assessing Authority has to re-consider the said issue once again based on the facts and circumstances of the present case and the ratio laid down in the above said case. Accordingly, all these writ petitions are allowed in part insofar as the ITC reversal under Section 19(2)(v) of the TNVAT Act alone is concerned and the impugned orders of assessment are quashed to that effect alone. Consequently, the matter is remitted back to the Assessing Officer to re-consider the said issue viz., ITC reversal under Section 19(2)(v) of the said Act in the light of the said decision of this Court in the case of Everest Industries Limited -v- State of Tamil Nadu & another, reported in [2017] 100 VST 158 (Mad). In all other aspects, the assessment orders stands. The Assessing Officer shall pass fresh orders of assessment as directed supra, after giving due opportunity of hearing to the petitioner. Such exercise shall be done by the Assessing Officer within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary
The State of Tamil Nadu
Commercial Taxes Department
Fort St.George, Chennai 9.

2. The Assistant Commissioner (CT)
Chinthadripet Association Circle, Chennai 6.

+1cc to Mr.B.B.Raveendran, Advocate Sr.39910
+1cc to the Special Government Pleader sr.39999

W.P.Nos.4559 to 4566 of 2015

srg 09/06/2017