IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.No.1654 of 2017
and CMP No.21419 of 2017

The Deputy Commissioner (CT) IV (FAC)
Large Tax Payers Unit,
Dugar Towers, 5th Floor,
No.34 (Old No.123), Marshalls Road,
Egmore, Chennai - 600 008. .. Appellant/Respondent

versus

M/s.Hyundai Motors India Ltd.,
(Rep. by its General Manager -Taxation
T.Saravanan,
H-1, SIPCOT Industrial Park,
Irrungattukottai,
Sriperumbudur Taluk,
Kancheepuram District,
Tamil Nadu - 602 117. .. Respondent/Petitioner

Writ Appeal filed against the order dated 14.02.2017 in W.P.No.30426 of 2015 by this court praying to issue a Writ of certiorarified calling for the records on the file of Respondent herein, in TIN/33781661709/2013-2014 dated 27.08.2015 and quash the same.

For Appellant : Mr.N.Vijaynarayanan
Advocate General

Assisted by Mr.J.Ramesh
Govt. Advocate

For Respondent : Mr.C.Natarajan,Senior Counsel
for Mr.N.Inbarajan

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

On 09.03.2018, we passed the following order

"Order of the Deputy Commissioner (CT) IV (FAC), Large Taxpayers Unit, Chennai, in TIN/33781661709/2013-14 dated 27.08.2015, has been challenged in W.P.No.30426 of 2015, with a prayer to quash the same. Said writ petition has been dismissed on 14.02.2017, citing, a decision of the writ Court dated 06.02.2017, in a batch of writ petitions, the lead being W.P.No.7969 of 2014 titled as "M/s.Everest Industries Limited, Rep. by its Senior Manager, Finance Vs. The State of Tamil Nadu Rep. by its Secretary, Commercial Taxes Department and another.

2. Though appellant has challenged the order made in W.P.No.30426 of 2015 dated 14.02.2017, by way of instant writ appeal, earlier, when a batch of Writ Appeals filed against the common order in M/s.Everest Case, came up for admission, submission was made by the learned Special Government Pleader (Taxes) that the instant appeal is different and the notification granting exemption is the issue.

3. Per contra, Mr.N.Inbarajan, learned senior counsel submitted that respondent had not taken any credit on the raw materials purchased. Respondent was permitted to collect tax and pay. But by erroneous application of Section 19(2)(v) of the Tamil Nadu Value Added Tax Act, 2006, assessment was made. By filing an affidavit respondent has affirmed that no credit on the raw materials has been taken.

4. Pleadings are completed.

5. On this day, when the matter came up for further hearing, Mr.N.Inbarajan, learned senior counsel for the respondent submitted that seeking rectification of the assessment order dated 27.08.2015, stated supra, rectification petition has been filed and acknowledged.

6. Mr.N.Vijaynarayan, learned Advocate General submitted that inasmuch as common order made in W.P.No.7969 of 2014 dated 06.02.2017 titled as "M/s.Everest Case" is not applicable to the case on hand, the impugned order in the appeal can be set aside, and that writ Court may be directed to re-examine the above issue. However, he also submitted that if any rectification petition had been filed and acknowledged, there is no objection for the rectification petition being examined on its own merits.

7. For verification as to whether any rectification petition has been filed before the assessment officer and pending, post on 12.03.2018, immediately after admission.

2. Today, Mr.N.Vijaynarayanan, learned Advocate General, Government of Tamilnadu submitted that after the assessment order dated 27.08.2015, passed by the Deputy Commissioner (CT)

IV (FAC), Large Taxpayers Unit, Chennai, M/s.Hyundai Motors India Limited, the respondent herein seemed to have submitted an application dated 21.09.2015 for withdrawing the notice of demand in Form-RR, consequent to the assessment order dated 27.08.2015 and that the said application dated 21.09.2015 submitted to the Deputy Commissioner (CT) IV (FAC), Large Taxpayers Unit, Chennai, cannot be treated as a rectification application, as contemplated under Section 84 of the Tamil Nadu Value Added Tax Act, 2006.

3. Responding to the above, Mr.C.Natarajan, learned senior counsel submitted that except the above application dated 21.09.2015, no other statutory application has been made to the said authority.

4. Section 84 of the Tamilnadu Value Added Tax Act, 2006, reads thus:

> "Power to rectify any error apparent on the face of the record: An assessing authority or an appellate or revising authority (including the Appellate Tribunal) may, at any time within five years from the date of any order passed by it, rectify any error apparent on the face of the record:
>
> Provided that no such rectification which has the effect of enhancing an assessment or any penalty shall be made unless such authority has given notice to the dealer and has allowed him reasonable opportunity of being heard.
>
> (2) Where such rectification has the effect of reducing an assessment or penalty, the assessing authority shall make any refund, which may be due to the dealer.
>
> (3) Where any such rectification has the effect of enhancing an assessment or penalty, the assessing authority shall give the dealer a revised notice of assessment or penalty and thereupon the provisions of this Act and the rules made thereunder shall apply as if such notice had been given in the first instance.
>
> (4) The powers under sub-section (1) may be exercised by the assessing authorities even though the original order of assessment, if any, passed in the matter has been the subject matter of an appeal or revision.
>
> (5) The provisions of this Act relating to appeal and revision shall apply to an order or rectification made under this section as they apply to the order in respect of which such order of rectification has been made.

5. As rightly contended by Mr.N.Vijaynarayanan, learned Advocate General, Government of Tamilnadu, application dated 21.09.2015, submitted to the Deputy Commissioner (CT) IV (FAC), Large Taxpayers Unit, Chennai, cannot be treated as an application under Section 84 of the Tamilnadu Value Added Tax Act. Earlier, on 09.03.2018, we recorded the statement of the learned Advocate General that common order made in W.P.No.7969 of 2014 dated 06.02.2017 titled as "M/s.Everest case", is not applicable to the case on hand and therefore the order impugned in the instant appeal can be set aside. He also made submission that writ Court may be directed to re examine the above issue.

6. On this day, inviting the attention of this Court to the extract of various Government orders, issued in the matter of granting economic subsidy as against refund of input tax, for the payments made to the vendors, Mr.C.Natarajan, learned senior counsel submitted that provision under Section 19(2)(v) as amended, will not govern the incentive schemes for setting up new and expansion of such industries.

7. Placing on record the submission of learned Advocate General, stated supra, order made in W.P.No.30426 of 2015 dated 14.02.2017, is set aside.

8. Before the writ Court, appellant has not filed counter affidavit. Before us, respondent has brought fresh facts and supporting documents. Parties are at liberty to raise appropriate pleadings before the writ Court with supporting documents. Before the writ Court, the respondent had the benefit of interim stay of assessment order dated 27.08.2015. Inasmuch as the order made in W.P.No.30426 of 2015, is set aside, interim order made in MP No.1 of 2015 in W.P.No.30426 of 2015, stands restored. Writ Court is requested to dispose of the matter, expeditiously.

9. With the above directions, the writ appeal is disposed of. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

The Deputy Commissioner (CT) IV (FAC)
Large Tax Payers Unit,
Dugar Towers, 5th Floor,
No.34 (Old No.123), Marshalls Road,
Egmore, Chennai - 600 008.

Copy to
The Section officer
Writ Section, High Court, Madras.

+1 CC to Mr.N. Inbarajan, advocate sr 18627.
+1 CC to The Spl.Govt. Pleader (T) sr 19349.

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GJII(CO)
SP(12/04/2018)