IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.01.2018
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.Nos.208 to 210 of 2018
and C.M.P.Nos.1593, 1595 and 1597 of 2018

The Assistant Commissioner (complaint),
Velacherry Assessment Circle,
No.28, Greenways Road, RA Puram,
Chennai 600 028. ... Appellant in all WAs

vs.

1. Blessed Stars,
Rep. by its Proprietor,
No.21a/11, MGR Nagar,
13th Main Road, Velachery,
Chennai - 600 042. ... Respondent in WA.Nos.208 & 209 of 2018

2. Blessed Stars Clean Rooms P. Ltd.,
Rep. by its Proprietor,
No.21a/11, MGR Nagar,
13th Main Road, Velachery,
Chennai - 600 042. ... Respondent in WA.No.210 of 2018

WRIT Appeals filed under Clause 15 of Letters Patent, against the common order dated 22.09.2016, made in W.P.Nos.33184 to 33186 of 2016.

WP.No.33184 to 33186 of 2016:Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other appropriate Writ Order or direction in the nature of a Writ to call for the entire records of the respondents in CST 1135594/2013-14 CST 1135594/2014-15 CST 1135594/2014-15 dated 26.05.2016 and 11.07.2016 and 11.07.2016 respectively and quash the order passed therein.

For Appellant in all W.As. : Mr.V.Haribabu, Additional Govt. Pleader (T)
For Respondent in all W.As. : Mr.A.P.Srinivas

COMMON JUDGMENT

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

M/s.Blessed Stars, represented by its Proprietor, has filed W.P.Nos.33184 and 33185 of 2016, for a writ of certiorari, to quash the assessment made in CST:Nos.1135594/2013-2014 and 1135594/2014-15 dated 26.05.2016 and 11.07.2016 respectively.

2. M/s. Blessed Stars Clean Rooms represented by its Proprietor, has filed W.P.No.33186 of 2016, for a writ of certiorari, to quash the assessment made in CST No.1135594/2014-15 dated 11.07.2016.

3. Before the writ Court, contentions have been made that reversal of ITC under Section 19(5)(c) is applicable, only when C Forms are not filed, whereas, the entire turnover is covered by C Forms and hence Section 19(5)(c) is not applicable. Further reversal of ITC under Section 19(2)(v) is patently erroneous, since the said section contemplates granting of ITC and not reversal of ITC. According to the respondents, whether a Trader or manufacture, both are eligible to get ITC under Section 19(2) of the TNVAT Act. In the notice, ITC reversal on the interstate turnover was proposed under Section 19(5)(c), whereas, in the impugned order, without any discussion, ITC was reversed under Section 19(2)(v).

4. The respondents are directly supplying goods to the buyer located in SEZ and no developer, co developer or intermediary is involved. Hence the question of reversal of ITC does not arise at all. The petitioner is engaged in selling goods purchased against C forms and I forms, and eligible to get credit for the ITC, as per the provisions of Sec. 19(2).

5. Reversal of ITC under Section 19(5)(c), 19(2)(v), 19(5)(a) and eligibility of ITC, under Section 18, on the sales made to SEZ, arises in different circumstances. The above section operates, in their own field and they are not interchangeable. There should be a clear cut finding, for invoking the said sections, for reversing ITC.

6. Before the writ Court, respondents have contended that the impugned assessment orders are exfacie illegal, and violative of the provisions of the Act. Principles of natural justice, is violated in this case. In view of the above, respondents have contended that writ petitions can be entertained, and appeal remedy is not effective.

7. Before the writ Court, appellant has not filed any counter affidavit. However, after hearing the learned counsel for the writ petitioner / respondents herein, and the learned Government Advocate (Taxes), writ Court, by common order in W.P.Nos.33184 to 33186 of 2016 dated 22.09.2016 at paragraph Nos.3 to 5 ordered, as hereunder.

> "3. It is seen that pre-revisional notice was issued on 06.07.2015 and the only proposal in the notice was with regard to the inter-state sales against "C" forms and "C" forms having not been availed, the respondent proposed to revise the turnover and tax the transactions. This was followed by another pre-revisional notice dated 15.09.2015, where also, there was only such proposal with regard to the non-production of "C" Forms. This issue was common to all the Assessment Years. The petitioner, on receipt of the notice, produced "C" Forms and the respondent while considering the explanation offered by the petitioner and the "C" Forms, verified the same and found it to be correct and allowed concessional rate of tax. However, sought to reverse the Input Tax Credit [ITC] u/s.19[2][v] and 19[5][a] of the TNVAT Act, 2006. In the absence of any proposal in the show cause notice, this could not have been done by the respondent, even assuming that he has some material to do so.
>
> 4. Therefore, on that technical ground, the impugned orders, in CST:1135594/2013-2014, CST:1135594/2014-2015, dated 26.05.2016 and 11.07.2016 respectively insofar as directing reversal of ITC u/s.19[2][v] and 19[5][a] of the Act, are quashed and in other aspects, the orders of assessment, being in favour of the dealer/petitioner herein, is confirmed.
>
> 5. The writ petitions are partly allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed."

8. We have perused the counter affidavit and memorandum of grounds filed in the instant appeals, and hold that they have no relevance to the facts of this case. Though, we can observe and place on record, as to how the appellants, have challenged, the orders of the writ Court, we refrain from doing so.

9. Section 19(2) of the Tamilnadu Value Added Tax Act, 2006, reads thus:

> "Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of –
>
> (i) re-sale by him within the State; or

(ii) use as input in manufacturing or processing of goods in the State; or
(iii) use as containers, labels and other materials for packing of goods in the State; or
(iv) use as capital goods in the manufacture of taxable goods.
(v) sale in the course of inter-State trade or commerce falling under sub-section (1) of section 8 of the Central Sales Tax Act, 1956.

10. Section 19(5)(a) and (c) of the Tamilnadu Value Added Tax Act, 2006, reads thus:

"19 (5) (a) No input tax credit shall be allowed in respect of sale of goods exempted under section 15
(b) ....
(c) No input tax credit shall be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of inter-State trade or commerce falling under sub-section (2) of section 8 of the Central Sales Tax Act, 1956."

11. What is proposed, put against the assessee and called upon to answer, alone should culminate in the order. Assessee, cannot adversely be affected, with a final order, to which there was no show cause.

12. On consideration of the entire material on record, we are of the view that there is violation of natural justice and writ Court has not committed any error.

13. Though Mr.V.Haribabu, learned Additional Government Pleader (Taxes) submitted that common order made in W.P.Nos.33184 to 33186 of 2016 dated 22.09.2016, can be modified by remanding the matter to the assessing officer, with liberty to initiate fresh proceedings, on the aspect of reversal of input tax credit, as per Sections 19[2][v] and 19[5][a] of the TNVAT Act, 2006, we are not inclined to entertain the appeals on that sole ground and modify the order as prayed for.

14. Writ Court has set aside the orders impugned therein, on the grounds that there was no proposal for input tax credit. If law permits initiation of fresh action, no liberty need be given.

15. In view of the above, common order made in W.P.Nos.33184 to 33186 of 2016 dated 22.09.2016, does not call for interference. Writ Appeals are dismissed. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ars

+1 cc to Special Govt Pleader sr 6709
+1 cc to Mr.A.P.Srinivas Advocate sr 6391

W.A.Nos.208 to 210 of 2018
and
C.M.P.Nos.1593, 1595 and1597 of 2018

lrs(co)
aa20/02/2018