In the High Court of Judicature at Madras

Dated : 16.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.17916 to 17920 of 2018
& WMP.Nos.21214 to 21218 of 2018

M/s.Shree Balaji Textiles, rep.
By its Partner
...Petitioner in all WPs

Vs

The State Tax Officer, Dharapuram,
Tirupur.
...Respondent in all WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs Certiorari to call for the records of the respondent in his proceedings in TIN : 33953021022/2011-12, TIN : 33953021022/2012-13, TIN : 33953021022/2013-14, TIN : 33953021022/2014-15 and TIN : 33953021022/2015-16 respectively and quash the impugned assessment orders all dated 09.3.2018 passed therein..

For Petitioner : Mr.P.V.Sudhakar

For Respondent : Mrs.G.Dhana Madhri, GA

COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, is aggrieved by the impugned orders for the years from 2011-12 to 2015-16.

3. In all the assessment orders, one common issue arises with regard to reversal of input tax credit under Section 19(9)(iii) of the said Act. So far as the reversal of input tax

credit under Section 19(9)(iii) of the said Act is concerned, the respondent adopted a uniform percentage of manufacturing loss at 2%. The other issue, which arises in the assessment years 2013-14 and 2014-15, is with regard to reversal of input tax credit under Section 19(2)(v) of the said Act.

4. The learned counsel for the petitioner submits that the assessee's case was that the loss, which has occurred during the course of manufacture, was added to the manufacturing costs and tax was collected from the customers and paid to the Department. However, the dealer did not substantiate the same before the Assessing Officer. The learned counsel for the petitioner, on instructions, further submits that if sufficient opportunity is granted to the petitioner, they will go before the Assessing Officer, produce the books of accounts and establish their stand.

5. So far as reversal of input tax credit under Section 19 (2)(v) of the said Act is concerned, the learned counsel submits that the issue is covered in favour of the dealer in the case of Everest Industries Ltd. Vs. State of Tamil Nadu [reported in (2017) 100 VST 158]. He further submits that as against the said judgment, the State preferred a writ appeal in W.A.No. 1260 of 2017, in which, there is an interim order granted restraining the Department from recovering tax from the said dealer.

6. Considering the above facts, this Court is of the view that one more opportunity can be granted to the dealer to go before the Assessing Officer and establish their stand that loss, which has occurred during the course of manufacture, was added to manufacturing costs and tax was collected from the customers and paid to the Department. So far as the issue relating to reversal of input tax credit under Section 19(2)(v) of the said Act is concerned, the matter should be kept in abeyance awaiting the decision of the Hon'ble Division Bench.

7. Accordingly, the writ petitions are disposed of by directing the petitioner to treat the impugned proceedings as show cause notices and substantiate their plea as to why the reversal of input tax credit under Section 19(9)(iii) of the said Act is incorrect. The petitioner shall produce all the documents to prove their case. The petitioner is directed to submit their objections within 15 days from the date of receipt of a copy of this order, after which, an opportunity of personal hearing shall be granted to the petitioner and the assessment with regard to reversal of input tax credit under Section 19(9) (iii) of the said Act shall be redone. As pointed out earlier, the revision of assessment with regard to reversal of input tax credit under Section 19(2)(v) of the said Act shall be kept in abeyance till the decision of the Hon'ble Division Bench, after

which, it is open to the respondent to issue notice and proceed in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

The State Tax Officer, Dharapuram, Tirupur.

+1cc to Mr.B.Raveendran, Advocate, S.R.No.47412

+1cc to the Spl Government Pleader, S.R.No.47166

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GSP(31/07/2018)