IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.32980, 30498 & 30499 of 2016
and
W.M.P.Nos.28499, 26434, 26435 of 2016

Bhartiya International Limited
Rep.by its Authorized Signatory,
C.Deenadayalan,
New No.76, Old No.118/12
Vepery High Road,
Periamet, Chennai - 600 003.

...Petitioner in all W.Ps

Vs.

1.Commercial Tax Officer,
Vepery Assessment Circle,
No.10, Greams Road,
Chennai - 600 006.

2.Joint Commissioner(CT)
Chennai (Central)Division,
No.1, Greams Road,
Chennai - 600 006.

... Respondent in all WPs

Prayer in W.P.No.32980 of 2016 : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent passed in TIN:33050522312/2012-2013 dated 26.08.2016 and quash the same in so far as it relates to rejection of refund claim amounting to Rs.16,69,767/- in respect of export sales effected from Air/Sea ports situated outside the state of Tamil Nadu and further direct the respondent to process the refund claim in accordance with law.

Prayer in W.P.No.30498 of 2016 : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the impugned proceedings of the first respondent passed in CST 653298/2012-13 dated 19.08.2016 and quash the same.

Prayer in W.P.No.30499 of 2016 : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the impugned proceedings of the first respondent passed in CST 653298/2013-14 dated 19.08.2016 and quash the same.

For Petitioner :Mr.N.Murali (in all WPs)

For Respondents :Mr.M.Hariharan (in all WPs)
Additional Government Pleader

C O M M O N O R D E R

Heard Mr.N.Murali, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing on behalf of the respondents.

2.The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax, 2006 [hereinafter referred to as "the TNVAT Act"] and the Central Sales Tax Act, 1956 [in short "the CST Act"] is aggrieved by the impugned assessment orders and in respect of the export sales effected from Air/Sea ports situated outside the State of Tamil Nadu and for a further direction to the respondent to process the refund claim.

3.An identical issue was considered in the assessees own case by the Revisional Authority namely, the Joint Commissioner (ST), Chennai, (Central) Division in RP Nos.41/2016, 42/2016 and 43/2016, pertaining to refund claims for the months of March, April, May, June and July, 2012. The Revisional Authority has allowed the petitioner's revision petition and consequently, the Assessing Officer has to give effect to the order by re-doing the assessment. Since the issue involved in this writ petition is identical and already the petitioner was successful before the Revisional Authority, the impugned assessments also have to be redone in terms of the directions issued by the Revisional Authority. At this juncture, it would be worthwhile to refer to the operative portion of the order passed by the Revisional Authority pertaining to RP No.41/2016 which related to the claim for refund. The said order is as follows:

> “e)Whether an ITC can be rejected for the reason that export was effected from the ports outside the State of Tamil Nadu. (March 2012 Rs.4,58,346.00 and April 2012 Rs.2,24,763).
>
> Quoting the above reason, the Learned Assessing Officer rejected the Input Tax Credit on their exports carried out through the Airports or Seaports situated outside Tamil Nadu simply quoting the reason of “Appropriate State” defined under: definition Section 2 under Central Sales Tax Act 1956. Whether this interpretation for a denial of ITC is correct or not?
>
> The term export and import are defined in Sub-section 18 and 23 of Section 2 of Customs Act 1962

as mean to taking out of India to a place outside India and bringing into India from outside India. Freedom of Trade, Commerce and intercourse as a sustaining force for the stability of the cultural and political unity of the federal polity and our Nation and that our country should function as a single economic unit devoid of any internal barriers have been enshrined from Article 301 to 307 in our Sovereign Constitution. If the dangerous concept of understanding by the Learned Assessing Officer is followed the land locked States like Madhya Pradesh, Punjab, Haryana, Uttar Pradesh etc., which have no coastal border cannot imagine of an export through the Seaports of other States. Hence, the rejection of ITC on an incipient understanding is set aside and restored to the credit of the petitioners for a refund.

In fine R.P.No.41, 2016 stands partly allowed and partly remanded.”

4.It is submitted by the learned counsel for the petitioner that the above order passed by the Revisional Authority has become final and the Assessing Officer is in the process of re-doing the assessment by giving effect to the order of the Revisional Authority.

5.Thus, for the above reasons, the writ petitions are allowed and the impugned orders are set aside and the matter is remanded back to the respondents to take note of the decisions from the Revisional Authority in RP No.41/2016 dated 04.12.2017 and redo the assessment in accordance with law. Consequently, connected miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

1.The Commercial Tax Officer,
Vepery Assessment Circle,
No.10, Greams Road,
Chennai - 600 006.

2.The Joint Commissioner(CT)
Chennai (Central)Division,
No.1, Greams Road, Chennai - 600 006.

+3 Ccs to Mr. Murali, Advocate sr 6859, 6860, 6858.
+1 CC to Spl. Govt. Pleader sr 7165.

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and
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MG(CO)
SP(27/02/2018)