IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.29941 of 2018

Janatics India Private Ltd.,
Represented by its General Manager
(Finance & Administration)
N.Muralidharan (M/62 years)
E-25 Sidco Industrial Estate
Kurichi
Coimbatore - 641 012 ... Petitioner

Vs.

The Assistant Commisioner (ST),
Podanur Assessment Circle,
Dr. Balasundaram Road,
Coimbatore - 641 018. ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records on the files of the Respondent herein in Ref.No.997/2018/A4 dated 10.09.2018 and to quash the same with the direction to refund the amount of Rs.32,60,497/- and Rs.73,29,601/- as per the rectification petition dated 13.06.2018.

For Petitioner : Mr.K.Narayanan

For Respondent : Mr.V.Haribabu
Additional Government Pleader

ORDER

Mr.K.Narayanan, learned counsel representing the counsel on record for writ petitioner is before this Court. Mr.V.Haribabu, learned 'Additional Government Pleader' ('AGP' for brevity) is before this Court on behalf of sole respondent.

2.Though a counter affidavit has been filed, from the trajectory of the hearing today and the undisputed submissions made in the hearing it surfaces that the instant writ petition turns on a very narrow compass. Entire matter turns on a principle laid down in Everest Industries Case [Everest Industries Limited Vs. State of Tamil Nadu reported in (2017) 100 VST 158] by a Hon'ble single Judge of this Court.

3. Everest Industries principle is to the effect that Section 19(2)(5) of 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', hereinafter 'TNVAT Act' for brevity is not applicable to manufacturers. It is submitted without any disputation or disagreement by both sides that this Everest Industries case has been carried in appeal by way of an intra-court appeal and a Hon'ble Division Bench of this Court is in seizin of the matter. Everest Industries case has been carried in appeal to Hon'ble Division Bench obviously by the dealers / assessees. Therefore, if dealers / assessees succeed in the appeals pending before the Division Bench, as an undisputed sequitur, they will be entitled to refund which the writ petitioner has sought for in the instant case albeit under Section 84 of TNVAT Act. Without elaborating on the same, suffice to say that writ petitioner is entitled to refund if the Everest Industries verdict goes in favour of the dealers / assessees. If it is in favour of Revenue, obviously, the writ petitioner will not be entitled to refund. If any other order is passed by the Division Bench, obviously the request of the writ petitioner for refund will be governed by such an order made by Hon'ble Division Bench. This Court is informed that writ appeals in which Everest Industries principle is under challenge are W.A.No.1260 of 2017 etc.,

4. Therefore, the writ petitioner has to necessarily await the outcome/verdict in aforesaid intra-court appeals, namely writ appeals against Everest Industries principle.

5. In the light of the narrative thus far, it will suffice to say that the prayer of the writ petitioner for refund will be governed by the verdict / judgment of Division Bench in the aforesaid intra-court appeals as this is the undisputed position before this Court.

This writ petition is disposed of with the above observation and therefore no further orders are necessary. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gpa

To

The Assistant Commisioner (ST),
Podanur Assessment Circle,
Dr. Balasundaram Road,
Coimbatore - 641 018.

+1cc to Mr.M.Inbarajan, Advocate Sr.58274
+1cc to the Special Government Pleader Sr.59386

W.P.No.29941 of 2018

ks[co]
srg 16/08/2019