IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 09.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.Nos.12380 to 12382 of 2016
and
W.M.P.Nos.10714 to 10716 of 2016

M/s.Thangam Metal Cans Private Limited,
Rep. by its Director,
17 & 26, T.H.Road,
Tondiarpet,
Chennai - 600081. ...Petitioner in
W.P.Nos.12380 & 12381/16

M/s.Ariba Plasti Cans,
Rep. by its Partner,
23, T.H.Road,
Tondiarpet,
Chennai - 600081. ...Petitioner in
W.P.No.12382/16

Vs

1. The State of Tamil Nadu,
   Rep. by its Secretary,
   Commercial Taxes Department,
   Fort St. George, Chennai.

2. The Commercial Tax Officer,
   Tondiarpet Assessment Circle,
   Chennai. ...Respondents in all WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in CST.876310/2014-15, CST.876309/2014-15, CST.957431/2014-15 and quash the order dated 22.03.2016 passed therein insofar as the issue of "ITC reversal of 3% for the interstate sales covered by "C" forms" is concerned and further direct the 2nd respondent not to apply Sec.2(1) of the Tamil Nadu Value Added Tax (Fifth Amendment) Act, 2013 to the petitioner herein in as much as the petitioner is a manufacturer of goods in the State of Tamil Nadu.

For Petitioner : Mrs.Hema Muralikrishnan
(in all WPs)

For Respondents: Mr.R.Swarnavel
(in all WPs) Government Advocate

COMMON ORDER

Today, the matter is called through video conferencing. By consent of both the parties, these Writ Petitions are taken up for final disposal.

2. The common issue involved in these Writ Petitions, challenging the finding of the Assessing Authority that there is no discrimination of manufacturer or trader in providing restriction to Input Tax Credit, has already been considered by this Court in the decision in Everest Industries Limited vs. The State of Tamil Nadu and others reported in (2017) 100 VST 158 (Mad) in the following manner:

> 20. A careful reading of Section 19 would show that a dealer is entitled to claim ITC in respect of tax suffered inputs, which are specified in the First Schedule, and are purchased within the State from a registered dealer, and therefore, are used for the purpose set out in the clauses (i) to (vi), as delineated in sub-section (2) of Section 19 of the 2006 Act.
>
> 20.1. The proviso to sub-section (2) of Section 19 limits the availment of ITC by providing that ITC shall be allowed in excess of 3% of the tax for the purpose specified in clause (v). Clause (v), if read with sub-section (2) of Section 19 would have me conclude that, if, an assessee were to purchase taxable goods specified in the First Schedule, which were sold in the course of Inter-State Trade or Commerce against declarations made in form 'C', an assessee would be allowed ITC only in excess of 3% of the tax paid on such purchases.
>
> 20.2. Therefore, there is, no my mind, nothing in the proviso, which will have me come to the conclusion that, it is attracted to any of the other clause referred to in sub-section (2) of Section 19 of the 2006 Act.

3. The aforesaid extract is self explanatory. As such, the finding of the authority that there is no discrimination of a manufacturer or trader under Section 19(2) of the TNVAT Act, is opposed to the aforesaid decision and hence, cannot be sustained.

4. For the foregoing reasons, the impugned orders dated 22.03.2016 passed by the second respondent are quashed and accordingly, all the Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Secretary,
   Commercial Taxes Department,
   Fort St. George, Chennai.

2. The Commercial Tax Officer,
   Tondiarpet Assessment Circle,
   Chennai.

+1cc to The Government Pleader, Sr no.29534

WP.Nos.12380 to 12382 of 2016
and
W.M.P.Nos.10714 to 10716 of 2016

KJ(CO)
RMP(15/10/2020)