IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2020

CORAM

THE HON'BLE MR. JUSTICE C. SARAVANAN

W.P.Nos.20751 & 20752 of 2012
and M.P.Nos.1 & 1 of 2012

M/s.Wheel Marketing
rep by its Proprietor
No.28, Muthunaicken Street,
Chennai-1. ... Petitioner in both W.Ps.

Vs.

The Assistant Commissioner (CT),
Mannady (West) Assessment circle,
No.191, NSC Bose Road,
Chennai - 1. ... Respondent in both W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying, for the issuance of Writ of Certiorari to call for the records of the respondent in the impugned orders in CST/71534/2009-10 & CST/71534/2010-11 dated 29.11.2011 and quash the same as ultra virus and contrary to law.

For Petitioner : M/s.C.Rekha Kumari
in both W.Ps.

For Respondent : Mr.M.Hariharan, AGP (Tax).
in both W.Ps.

COMMON ORDER

By this common order, both the Writ Petitions are being disposed.

2.Heard the learned counsel for the petitioner and the respondent.

3.The impugned orders have been passed under Section 87A of the TNVAT Act, 2006 for the Assessment Years 2009-10 and 2010-11, both dated 29.11.2011. In these impugned orders, the respondent has called upon the petitioner to reverse the proportionate Input Tax Credit (ITC) under Section 19(5) of the TNVAT Act, 2006, though the assessment pertains to C.S.T.

4.By the impugned orders dated 29.11.2011, for the Assessment Year 2009-10 the petitioner has been asked to reverse a sum of Rs.78,524/- as Input Tax Credit (ITC), whereas for the Assessment Year 2010-11 the petitioner has been asked to reverse a sum of Rs.3,06,414/- as Input Tax Credit (ITC). Since the respective orders pertain to CST Assessments, the petitioner cannot be asked to reverse the proportionate credit availed as Input Tax Credit (ITC) under Section 19 of the TNVAT Act, 2006. Therefore, to that extent, the impugned orders are liable to be quashed.

5.At the same time, the respondent is entitled to recover the differential tax in respect of goods received under the Inter-state sale for which the petitioner has not furnished "C" Form. The petitioner may furnish the "C" Form to the respondent on or before the hearing date to be fixed by the respondent. The respondent shall pass speaking order within three months from the date of receipt of a copy of this order. Needless to state, the petitioner shall be heard before the passing order.

6.These Writ Petitions are allowed by way of remand with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

tsh/jen

To
The Assistant Commissioner (CT),
Mannady (West) Assessment circle,
No.191, NSC Bose Road, Chennai - 1.

+1cc to M/s.C.Rekha Kumari, Advocate SR.No.1906

+1cc to Special Government Pleader SR.No.1543

W.P.Nos.20751 & 20752 of 2012

SR(CO)

GMY(11/02/2020)