IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No. 21274 of 2012
and MP.No. 1 of 2012

M/s.Apl Apollo Tubes Ltd.,
Formerly Bihar Tubes Limited,
Rep., by its General Manager,
Arun Agarwal, 332-338 Alur,
Perandapalli Post ,Berigai Road,
Hosur. ..Petitioner

-Vs-

The Assistant Commisioner
(Commercial Taxes)
Hosur (North). ..Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records on the file of the respondent in CST.NO.990493/09-10 dated 29.02.2012 and Revisional Order dated 31.05.2012 and to quash the same as illegal, invalid and unsustainable in law and further direct the respondent to withdraw the demand notices dated 29.02.2012.

For Petitioner : Ms.G.Sumithra
For Respondent : Mr.ANR.Jayaprathap SGP(Taxes)

O R D E R

Today, the matter is listed through Video Conference. By consent of both the parties, the Writ Petition is taken up for final disposal.

2. The learned counsel for the petitioner would predominantly raise a ground that when the assessment under the Central Sales Tax Act has been finalized, the reversal of ITC made under Section 19(4) of the TNVAT Act for the CST Transaction, is impermissible.

3. The respondent in the impugned proceedings viz., revision of assessment has come to the conclusion that the objections of the petitioner for reversal of the ITC under Section 19 (4) of the TNVAT Act can be initiated only under Section 27 of the VAT Act and not under CST Act, is incorrect and thereby, has appealed the assessment made in the year 2009-2010.

4. I am not in agreement with such a finding rendered by the respondent in the impugned order of revision assessment. Section 9 (2) A of the CST Act deals with assessment with regard to levy of tax and penalty and collection of tax and there is no power vested with the authorities for reversal of ITC availed under TNVAT Act. The respondent in the impugned proceedings, while disagreeing with the objection raised by the petitioner herein, has not justified how they have derived such powers and therefore, the finding itself cannot be sustained. In view of the above, the petitioner would be entitled to succeed.

5. Accordingly, the impugned order passed by the respondent in CST.NO.990493/09-10 dated 29.02.2012 and Revisional Order dated 31.05.2012 are set aside and the matter is remanded back to the respondent for fresh consideration. The respondent herein is directed to consider the same on its own merits and pass appropriate orders, atleast within a period of 12 weeks from the date of receipt of a copy of this order, after giving due opportunity of personal hearing to the petitioner, if necessary through Video Conference.

6. With the above directions, the Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

DP

To

The Assistant Commisioner
(Commercial Taxes)
Hosur (North).

+1cc to Mr.G.Sumitra, Advocate, S.R.No.25468
+1cc to Special Government Pleader, S.R.No.25383

W.P.No.21274 of 2012
and
M.P.No.1 of 2012

VS(CO)
KKV/27/08/2020