IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	10.01.2020
Pronounced On	23.01.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.25820 of 2015
and
M.P.No.1 of 2015

M/s.Universal Engineering Works,
Rep. by its Proprietor,
Mr. Mohammed Aslam Sheriff,
No.29, Thayar Sahib Street,
Chennai - 600 002. ... Petitioner

vs

The Assistant Commissioner (CT),
Chepakkum Assessment Circle,
PAPJM Building Annexe,
Greams Road, Chennai - 600 006. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in TIN/33300560635/2013-14 and quash the order dated 10.07.2015 passed by the respondent in so far as it relates to reversal of Input Tax Credit under section Proviso to Sec.19(2)(v) of the Tamilnadu Value Added Tax Act, 2006 therein and further direct the respondent not to apply Sec.2(1) of the Tamilnadu 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 consequent to the omission of proviso to Sec.19(2)(v) by Tamilnadu Value Added Tax (Fifth Amendment) Act, 2015 read with substitution of Clause (v) to Section 19(2) by Tamilnadu Value Added Tax (Fifth Amendment) Act, 2015.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.Mohammed Shaffiq
Special Government Pleader

O R D E R

Heard learned counsel for the petitioner and learned Special Government Pleader for the respondent Commercial Tax Department.

2.The petitioner is aggrieved by the impugned order dated 10.07.2015 passed by the respondent. By the impugned order the petitioner has been asked to reverse input tax credit in terms of Section 19(5)(c) of the TNVAT Act, 2006 for an amount of Rs.1,35,719/-as detailed below:-

> 3.To a notice issued accordingly, the dealers have not filed any reply so far, which shows that they have none to offer. Therefore, based on the available records and facts of the case, the proposal is confirmed and ITC reversed under Section 19(5)(c) & 19(2)(v) of the TNVAT Act, 2006 for the year 2013-14 as follows:-

	ITC Reversal		
	19[5] [c] Rs.	19[2][v] Rs.	Total Rs.
Due	1,145/-	1,35,719/-	1,36,864/-
Paid/Reversed	Nil	Nil	Nil
Balance	1,145/-	1,35,719/-	1,36,864/-

3.The operative portion of the impugned order reads as under:-

> 3.As per the amended provision made under Section 19(2)(v) of the TNVAT Act, a dealer who effects interstate sales under Section 8 (1) of the Central Sales Tax Act is eligible to claim ITC in excess of three percent and therefore, ITC has to be reversed at 3% in respect of sales made under Section 8(1) of the Central Sales Tax Act.
>
> Hence, it was also proposed to reverse the ITC by applying the following formula:
>
> ITC claimed 5% / 14.5% X Sales falling Section 8(1) of the CST Act
> --- X 3/5 / 14.5
> Sales under TNVAT Act + Taxable and Exempted Sales under CST Act

Interstate sale covered by 'C' Form Rs.	Total ITC claimed for the year Rs.		Total taxable sale Rs.	ITC Reversal due u/s 19(2)(v) Rs.	ITC already reversed Rs.	Balance ITC to be reversed Rs.
72,63,408	5%	9,64,054	3,09,56,427	1,35,719	0	1,35,719
			TOTAL	1,35,719	0	1,35,719

Total Input Tax Credit Due	Rs.	1,36,864/-

3.To a notice issued accordingly, the dealers have not filed any reply so far, which shows that they have none to offer. Therefore, based on the available records and facts of the case, the proposal is confirmed and ITC reversed under Section 19(5)(c) & 19(2)(v) of the TNVAT Act, 2006 for the year 2013-14 as follows:-

	ITC Reversal		
	19[5][c] Rs.	19[2][v] Rs.	Total Rs.
Due	1,145/-	1,35,719/-	1,36,864/-
Paid/Reversed	Nil	Nil	Nil
Balance	1,145/-	1,35,719/-	1,36,864/-

Notice in Form 'O' is issued.

4.In the impugned order, it has been held that the petitioner effected inter-state sales under Section 8(2) of the Central Sales Tax Act, 1956 and therefore under the provisions of Section 19(2)(v) of TNVAT Act, 2006 as it stood during the material period, the petitioner was eligible to restricted ITC. In other words, it is the contention of the commercial tax department that the petitioner was eligible for ITC only in excess of 3% of Central Sales Tax under Section 8 (1) of Central Sales Tax Act, 1956 on the inputs locally purchased by the petitioner.

5.It is the contention of the learned counsel for the petitioner that the petitioner was entitled to avail input tax credit (ITC) under Section 19(1) of the TNVAT Act, 2006 for the purposes enumerated in Section 19(2) of the said Act without any limitation. It is submitted that proviso of Section 19(2)(v) of TNVAT Act, 2006 is not attracted for the sale of manufactured or processed goods in the course of inter-state sales and commerce during the material.

6.The learned counsel for the petitioner places reliance on the decision of this court rendered in Everest Industries Ltd. Vs. State of Tamil Nadu and Another, [2017] 100 VST 158 (Mad).

7.Per contra the learned Special Government Pleader for the respondent Commercial Tax Department submits that the said decision has been stayed in W.A.No.1260 of 2017 by an order dated 20.10.2017.

8.I have considered submission of the learned counsel for the petitioner and the respondent. The period in dispute in the present case is 2013-14. It is the categorical stand of the petitioner that the petitioner is a manufacturer of goods liable to tax both under TNVAT Act, 2006 and Central Sales Tax Act, 1959 and therefore the petitioner was entitled to avail input tax credit without any restriction.

9.During the period in dispute Section 19(2) read as under:-

> (2)Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of -
>
> i. re-sale by him within the State; or
>
> ii.use as input in manufacturing or processing of goods in the State; or
>
> iii.use as containers, labels and other materials for packing of goods in the State; or
>
> iv.use as capital goods in the manufacture of taxable goods.
>
> v. sale in the course of inter-State trade or commerce falling under sub-section (1) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956);
>
> vi.sale in the course of inter-State trade or commerce falling under sub-section (1) and (2) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956)
>
> vii.Agency transactions by the principal within the State in the manner as may be prescribed.

Provided that Input Tax Credit shall be allowed in excess of three per cent of tax for the purpose specified in clause (v).

10.The above proviso to Section 19(2) of the Act was inserted into the statute vide Amendment Act No.20/08/2013 and gazetted and notified vide Government Order (G.O).Ms.No.139 dated 08.11.2013. The above proviso was brought into force with effect from 08.11.2013. Thus, it was partly in force during the period in dispute.

11.It may not be out of place to mention that Section 19 (2)(v) was later substituted. In the Budget Speech of 2015-16, it was mentioned that reversal of tax credit at the rate of 3% on the interstate sale of the goods as per proviso to Section 19(2)(v) introduced with effect from 08.11.2013 was being withdrawn to make the manufacturing industries in Tamil Nadu more competitive with their counterparts in the neighbouring States.

12.With effect from 01.4.2015, the amended Section 19(2) (v) reads as under:-

(v) sale in the course of inter-state trade or commerce falling under subsection (1) and (2) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956); or

13.By the same amendment, the proviso which was inserted with effect from 08.11.2013 was deleted.

14.A plain reading of the section 19(2)(v) as it stood during the period in dispute and thereafter shows that it applies only to the sale of the goods as such. In other words, intention was to restrict the credit only in the case of dealers who were purchasing goods at higher rate of tax and accumulating credit and selling final product under interstate sale at a lower rate of tax.

15.Section 19(2)(v) was never intended apply to a manufacturer as the input tax credit availed by a manufacturer under section 19(1) of TNVAT Act, 2006 was allowed on such input used in the manufacture or process of goods in the State. Since the proviso to Section 19(2) was confined to situations contemplated under Section 19(1)(v) alone, the restrictions contained therein could not apply to dealer engaged in the manufacture or process of goods in the state. The reason given in the budget speech which is extracted in paragraph 20.4 of the decision of this court in Everest Industries Ltd referred to supra proceeds on wrong interpretation of the provisions as it reads. The manufacturer or processor pay tax on value addition whereas dealers simplicitor pay tax on their sale price without any value addition.

16.I therefore concur with the view of the learned Single Judge in the above case. I am of the view that the impugned order is unsustainable and is liable to be quashed. However, to meet the ends of justice, the case is remitted back to the respondent to pass fresh order. The respondent shall pass a speaking order in terms of the observation in this order and after considering the final order to be passed by the Hon'ble Division Bench of this Court in W.A.No.1260 of 2017.

17.Accordingly, the petition stands disposed by way of remand for passing a fresh order. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Chepakkum Assessment Circle,
PAPJM Building Annexe,
Greams Road, Chennai - 600 006.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No. 4881
+1cc to the Government Pleader(Taxes), S.R.No. 5414

W.P.No.25820 of 2015
and M.P.No.1 of 2015

VBA(CO)
GN(26/02/2020)