IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.42227 of 2016
and
M.P.No.36135 of 2016

M/s.Lucas-TVS Ltd,
Rep by the Company Secretary &
General Manager (Finance),
11, Pattullos Road,
Chennai – 600 002. ... Petitioner

Vs.

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

2.The Assistant Commissioner (CT),
Anna Salai Assessment Circle,
Chennai. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in TIN/33870620025/2014-15 and quash the proceedings dated 11.11.2016 passed therein 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 : Mr.B.Raveendran

For Respondents : Mr.A.N.R.Jayaprathap
Government Advocate (T)

O R D E R

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. In this Writ Petition, the petitioner has challenged the impugned notice seeking to recover the input tax credit availed on input used in the manufacture of goods sold to buyer in other states. The issue is no longer res integra and is covered by a decision of this Court rendered in Everest Industries Ltd and others Vs. State of Tamil Nadu and batch, 2017 SCC OnLine Mad 8568. The operative portion of the said decision reads as follows:-

> 52. Therefore, there is, to 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.
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> 53. A plain reading of the provisions of sub-section (1) and sub-section (2) of Section 19 of the 2006 Act would show that, as long as specified goods, which suffer tax are used for any of the purposes set out in clauses (i) to (vi) of sub-section (2) of Section 19, the assessee should be able to claim the ITC, with a caveat in so far as clause (v) is concerned. The caveat being, the limitation, which is encapsulated in the proviso to Section 19(2) of the 2006 Act. Therefore, the limitation provided in the proviso would apply only vis-a-vis the purpose specified in clause (v) and not qua other purposes set out in clause (i) to (iv) and (vi) of Section 19(2) of the 2006 Act.
>
> 54. If, that be the conclusion, then, surely, none of the impugned orders can sustain. The fact that, the proviso, on account of erroneous interpretation by the Revenue, was causing difficulties for the manufacturers, is exemplified by the Statement of Objects and Reasons which was set forth, at the time of introduction of Act 5 of 2015.
>
> 55. A perusal of the relevant extract of the Statement of Objects and Reasons would show that insertion of the proviso to Section 19(2) of 2006 Act had led to the manufacturing industries located in the State of Tamil Nadu, becoming less competitive as compared to their counterparts in the neighbouring States. The relevant part of the Statement of Objects and Reasons, which sheds light on this aspect of the matter is extracted hereunder, for the sake of convenience:

"In the Budget Speech for the year 2015-2016, among others, the following announcements were made:—

(i) Input tax credit reversal imposed at the rate of 3 per cent on the Inter-State sale of goods as per proviso to Section 19(2)(v) of Tamil Nadu Value Added Tax Act, 2006, which was introduced with effect from 11-11-2013 will be withdrawn henceforth to make the manufacturing industries in Tamil Nadu more competitive with their counterparts in the neighbouring States."

(emphasis is mine)

3. The learned counsel for the respondent submitted that this Writ Petition is liable to be dismissed as the petitioner has only challenged the notice and therefore the petitioner can make appropriate submission before the respondent. It is further submitted that the said decision of the learned Single Judge in Everest Industries Ltd cited supra has been appealed against before the Division Bench of this Court and is pending final disposal.

4.Unless the said decision is set aside by the Division Bench of this Court, it is binding on the respondent. Since the issue at the moment is squarely covered in favour of the petitioner, I direct the respondent to pass appropriate order in terms of the decision of this Court in Everest Industries Ltd cited supra, within a period of three months from the date of receipt of a copy of this order. The petitioner is directed to file objections/representations if any, within a period of thirty days from the date of receipt of a copy this order. Needless to state that before passing such order, the petitioner shall be heard.

5.Writ Petition stands disposed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2.The Assistant Commissioner (CT),
Anna Salai Assessment Circle,
Chennai.

+1cc to Mr.B.Raveendran, Advocate Sr.16868
+1cc to the Special Government Pleader sr.16930

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and
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srg 01/07/2020