BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:31.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.SURESH KUMAR**

W.P.(MD) No.10624 of 2012
and
WP(MD)No.1 of 2012

Tvl.Jupiter Industries
Rep.by its Partner
TR.Ganesh ... Petitioner

Vs.

1.The State of Tamil Nadu,
represented by the Secretary to Government,
Department of Commercial Taxes,
Fort St. George,
Chennai-600 009.

2.Special Commissioner &
Commissioner of Commercial Taxes,
Commercial Taxes Dept.,
Ezhilagam, Chepauk,
Chennai-600 005.

3.The Assistant Commissioner-Commercial Taxes,
Thirupparankundram Assessment Circle,
Madurai- 625 020. ... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the impugned notice in TIN 33066230999/2010-11 dated 07.06.2012 from the files of 3rd respondent herein quash the same as much as it relates to reversal of input tax credit, relying upon the provisions of impugned section 19(2)(5) read with section 19(5)(c) of the Tamil Nadu value Added Tax Act, 2006 and Rule 10(9)(a) of Tamil Nadu Value Added Tax Rules 2007.

For Petitioner : Mr.R.Krishnamoorthy
for Mr.T.Bashyam
For Respondents : Mr.R.Sureshkumar
Government Advocate

O R D E R

Prayer sought for in this writ petition is for a writ of certiorari, to call for the records of the impugned notice in TIN:33066230999/2010-11, dated 07.06.2012, from the file of the 3rd respondent herein, quash the same as much as it relates to reversal of input tax credit, relying upon the provisions of section 19(2)(5) read with section 19(5)(c) of the Tamil Nadu value Added Tax Act, 2006 and Rule 10(9)(a) of Tamil Nadu Value Added Tax Rules, 2007.

2.The petitioner is a dealer governed under the erstwhile TNVAT Act, 2006, for the Assessment Year 2010-2011 return had been submitted under Section 22(2), however, subsequently, a pre-revision notice has been issued on 07.06.2012, by the respondent revenue, on the ground that the petitioner had effected interstate sales to the value of Rs.29,26,844/- during 2010-2011, out of which, they have submitted the "C" declaration form to the value of only Rs.20,49,821/- and therefore, there was no "C" declaration form made available or filed by the petitioner for the remaining volume of Rs.8,77,023/-. Therefore, a reversal of Input Tax Credit was proposed as per Section 19(2)(v) of TNVAT Act, 2006 r/w rule 10(9)(a) of TNVAT Rules, 2007. Challenging the pre-revision notice dated 07.06.2012, the present writ petition has been filed.

3.Mr.R.Krishnamoorthy, learned counsel appearing for the petitioner would submit that at the outset, the issue raised in the writ petition had already been covered by a decision of this Court in a batch of writ petitions in ***M/s.Everest Industries Limited vs. The State of Tamilnadu rep. by its Secretary, Commercial Tax Department and another,*** dated 06.02.2017 made in ***W.P.No.7969 of 2014 etc., batch,*** reported in ***2017 (100) VST 158 (Mds).***

4.I have heard the learned Government Counsel appearing for the respondent also, he would submit that, whether this judgment referred to in Everest case has been further appealed or not, is to be ascertained, but any how, if at all, the said judgment is applied to the present facts of the case, and if ultimately, any further appeal has been filed as against the judgment in Everest Industries Limited case, the same fare has to be met by the present petitioner also, he contended.

5.In the said judgment in Everest Industries Limited case referred to above, the learned Judge has exactly confronted with the similar issue, where after having exhaustive discussion on the issue, the learned Judge has concluded that, if the manufacturer, who claimed that they have purchased inputs, which are referred to in first schedule of 2006 Act, in respect of them, if tax have been paid, and the tax suffered inputs have been used in manufacturing or processing of goods industries, they should be allowed to full credit of the tax paid on the inputs without being fatal by the proviso of Section 19(2)(v) of the TNVAT Act, 2006.

6.Accepting the said contention, the learned Judge has allowed those writ petitions in the said decision stating that, the said provisions would not apply to the said petitioners. Therefore, in this context, since it is the case of the petitioner that the same logic and the principle would apply to the facts of the present case also, accordingly, the learned counsel claimed that, the said benefit given in Everest Industries Limited case shall also be extended to the petitioner.

7. In view of the said decision, which can be followed in the present case also, in view of the facts and circumstances referred to above, this Court is inclined to pass the following order:

> "that the impugned pre-revision notice is quashed and accordingly, this writ petition is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed."

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Secretary to Government,
   State of Tamil Nadu,
   Department of Commercial Taxes,
   Fort St. George,
   Chennai-600 009.

2. Special Commissioner &
   Commissioner of Commercial Taxes,
   Commercial Taxes Dept.,
   Ezhilagam, Chepauk,
   Chennai-600 005.

3. The Assistant Commissioner-Commercial Taxes,
   Thirupparankundram Assessment Circle,
   Madurai- 625 020.

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PS(CO)
KB(06.10.2021) 3P 4C