BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.09.2021**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)Nos.21179 of 2014, 197, 215 & 832 of 2015

and

M.P(MD)Nos.1 of 2014, 1,1,1,2 & 2 of 2015

W.P.(MD)No.21179 of 2014:

M/s.Thiagarajar Mills (P) Ltd.,
Rep. by its Vice President (Corporate),
C.S.K.Vijayan. ... Petitioner in W.P.(MD)No.21179 of 2014

-Vs-

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

2.The Assistant Commissioner (CT)
Thirupparankundram Circle,
Madurai. ... Respondents in W.P.(MD)No.21179 of 2014

W.P.(MD)No.197 of 2015:

Tvl.Maruthi Poly Bags (P) Ltd.,
Rep. by its Managing Director,
N.Renganathan. ... Petitioner in W.P.(MD)No.197 of 2015

-Vs-

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

2.The Assistant Commissioner (CT)
Pudukkottai – 1 Assessment Circle,
Pudukkottai. ... Respondents in W.P.(MD)No.197 of 2015

W.P.(MD)No.215 of 2015

M/s.J.K.Fenner (India) Limited.,
Rep. by its Authorized Signatory,
V.Varadhanambi. ... Petitioner in W.P.(MD)No.215 of 2015

-Vs-

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

2.The Assistant Commissioner (CT) (FAC),
Madurai (Rural) South Assessment Circle,
Madurai. ... Respondents in W.P.(MD)No.215 of 2015

W.P.(MD)No.832 of 2015

M/s.Servalakshmi Paper Limited,
Rep. by its Deputy General Manager (Accounts),
H.S.Seetharaman. ... Petitioner in W.P.(MD)No.832 of 2015

-Vs-

The Assistant Commissioner (CT),
Palayamkottai Assessment Circle,
Tirunelveli. ... Respondent in W.P.(MD)No.832 of 2015

Prayer in W.P.(MD)Nos.21179 of 2014:

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, call for the records of the 2nd respondent in TIN:33616230745/2014-15 and quash the order reversing ITC on the interstate sales of manufactured/processed goods effected for the months of May 2014 to October 2014 passed therein on 17.12.2014 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 inasmuch as the petitioner is a manufacturer/processor of goods in the State of Tamil Nadu.

Prayer in W.P.(MD)No.197 of 2015:

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, call for the records on the file of the 2nd respondent in TIN:33844101032/2014-15 dated 17.11.2014 and quash the same as illegal, against the principles of natural justice and without jurisdiction and further direct the 2nd respondent not to apply Section 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.

Prayer in W.P.(MD)No.215 of 2015:

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, call for the records of the 2nd respondent in TIN:33825164260/2013-14 dated 28.11.2014 and quash the order passed therein and further direct the 2nd respondent not to apply Section 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.

Prayer in W.P.(MD)No.832 of 2015:

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, call for the records of the respondent in TIN:33602026237/2013-14 and quash the order reversing ITC on the interstate sales of manufactured goods effected passed therein on 22.12.2014 and further direct the respondent not to apply Section 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.R.D.Ganesan
(in WP(MD)Nos.21179 of 2014 & 832 of 2015)
Mr.A.Chandrasekaran
(in WP(MD)No.197 of 2015)
Mr.S.Karunakar
(in WP(MD)No.215 of 2015)

For Respondents : Mr.R.Sureshkumar (in all WPs)
Government Advocate

COMMON ORDER

Since the issue raised in all these writ petitions is one and the same, with consent of both sides, these writ petitions are heard together and disposed of by this common order.

2.It is the case of the petitioners that, these petitioners are the dealers registered under the Tamil Nadu Value Added Tax Act, 2006 [hereinafter referred to as "TNVAT Act" in short]. During the relevant period, the claim of ITC availed by them for their inputs, which they purchased and used in manufacturing industries respectively run by them, subsequently seems to have been reversed or not allowed by the respondent revenue / assessing authority on the ground of applying proviso to Section 19(2) (ii) & (vi) of the TNVAT Act. In Section 19(2) of the TNVAT Act, after six circumstances mentioned therein as to why the ITC shall be allowed for the purchase of goods made within the State from the registered dealer, there has been a proviso inserted by amendment through Act 28 of 2013 with effect from 11.11.2013 by notification dated 08.11.2013. The amendment reads thus:

> "provided that input tax credit shall be allowed in excess of three percent of tax for the

purposes specified in Clause (v)."

3.Even though the proviso is applicable only in respect of the 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, which in fact has been stated in Sub-Clause (v) of Section 19(2) of the TNVAT Act, the said proviso seems to have been applied in cases, which fall under category (ii), which are dealers / manufacturers, who use the purchase of goods as inputs in manufacturing or processing of goods in the State.

4.Therefore, by making such application of the said proviso in Sub-Clause (ii) category, the ITC claimed and availed by dealers/manufacturers has also been reversed. In the result, consequential orders of assessments have been made and those assessment orders have been put under challenge in these writ petitions by the respective writ petitioners / dealers / manufacturers, on the ground, by making a wrong application of the proviso to Section 19(2) of the TNVAT Act, such a reversal of ITC since has been made, the assessment is bad and therefore, it should be interfered with.

5.At the outset, the learned counsel for all these petitioners have submitted that the issues raised in these writ petitions have already been confronted 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).*** By relying upon this judgment, the learned counsel for the petitioners would contend that, since it has been held that the said judgment in ***Everest Industries*** case cited supra that if the manufacturer who claimed that they have purchased inputs, which are referred to in First Schedule of 2006 Act in respect of which, tax has been paid and 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.

6.By virtue of the said decision, having been taken to the knowledge of the learned counsel appearing for the petitioners, the judgment has become final. The cases now at hand are also covered by the said decision. Therefore, they seek allowing all these writ petitions.

7.The learned counsel for the respondents would fairly submit that the issue raised has been decided in the said ***Everest Industries*** case cited supra, where the proviso should be made applicable only to Section 19(2)(v), should not be made applicable to other Sub-Clauses especially under Sub-Clause (ii) referred to above, in which dealers industries are to be categorized. Hence, the needful may be done by passing appropriate orders, he contended.

8.I have considered the said submissions made by the learned counsel for the parties and have perused the materials placed before this Court.

9.Infact, I had an occasion to consider a similar issue in a writ petition in W.P.(MD)No.10624 of 2012 in the case of ***Tvl.Jupiter Industries vs. State of Tamil Nadu***, where I have passed an order on 31.08.2021, exactly on a similar situation. To have a quick reference of the said order, the following portion of the order is extracted hereunder:

> "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, if any further appeal has been filed as against the judgment in Everest Industries Limited case, the same case has to be met by the present petitioner also, he contended.*
>
> ***5.****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 petitioner's and 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, and 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:*
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> *"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."*

10. In view of the said position, where the issue has been settled as early as in the year 2017 in the aforestated ***Everest Industries*** case cited supra that proviso in question cannot be made applicable to the category of dealers industries or manufacturers like the petitioners and therefore, they are entitled to get full credit of ITC. Therefore, such a reversal is not possible by applying the said proviso by deducting 3 percent.

11. Therefore, this Court feels that, all these impugned orders are liable to be interfered with, as that was passed only by making application applying the proviso referred to above under Section 19 (2) of the TNVAT Act. Therefore, all these writ petitions are to be allowed.

12. In that view of the matter, the impugned orders are quashed and the writ petitions are allowed.

13. It is brought to the notice of this Court that in W.P.(MD) No.215 of 2015, at the time of admission, as per the conditional order, the petitioner dealer paid 25% of the tax demanded in the impugned order therein and therefore, the said amount can be returned back to the petitioner or can be adjusted towards current year or future tax payable by the petitioner. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SM

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,
Commercial Taxes & Registration Department,
Fort St. George, Chennai.

2.The Assistant Commissioner (CT)
Thirupparankundram Circle,
Madurai.

3.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Commercial Taxes Department,
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4.The Assistant Commissioner (CT)
Pudukkottai – 1 Assessment Circle,
Pudukkottai.

5.The Assistant Commissioner (CT) (FAC),
Madurai (Rural) South Assessment Circle,
Madurai.

6.The Assistant Commissioner (CT),
Palayamkottai Assessment Circle,
Tirunelveli.

+2 CC to M/s.R.D.GANESAN, Advocate (SR-29352, 29354)
+1 CC to M/s.A.CHANDRASEKARAN, Advocate (SR-29413)
+1 CC to M/s.SPL. GP (SR-29464)

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PS(CO)/RS (12.10.2021) 7P-11C