IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2022

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.4364 OF 2019
&
W.M.P.NOS.4900 & 11383 OF 2019

M/s.Kosei Minda Aluminum Company Private Ltd.,
Rep. by its Authorized Signatory,
No.20A and 20B,
Vadakkupattu Village,
Sriperumbudur Taluk,
Kancheepuram District – 603 204. ... Petitioner

.Vs.

The State Tax Officer,
Oragadam Assessment Circle,
Padappai – 601 301,
Kancheepuram District. ... Respondent

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in his proceedings in TIN 33601562674/2014-15 dated 11.12.2018 and quash the order passed therein as unconstitutional and to direct the respondent to pass revised orders in pursuant to the amendments to the section 19(2)(v) of the TNVAT Act 2006 as per Act No.5 of 2015 and also per the various decisions of the Madras High Court.

For Petitioner : Mr.C.Baktha Siromoni

For Respondent : Mr.Richardson Wilson
Additional Government Pleader

ORDER

Mr.Richardson Wilson, learned Additional Government Pleader appearing for the respondent fairly concurs with the petitioner that the issue that arises for consideration in this Writ Petition challenging the impugned order of assessment dated 11.12.2022 has to be answered in favour of the petitioner.

2. The assessment proceeds to reverse the petitioner's claim for Input Tax Credit (ITC) in terms of Section 19(2)(v) of the Tamil Nadu Value Added Tax Act, 2006. Subsequently the Division Bench of this Court in the case of The State of Tamil Nadu represented by its Secretary, Commercial Taxes Department, The Deputy Commissioner (CT) (FAC) V. M/s.Everest Industries Limited (2022(4) TMI 1204) has decided the issue in favour of the assessee, and the relevant portion of the order reads as follows:

> "........
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> 139. In the present case, the mischief is two in numbers. Firstly, the one identified by the State and the other, the counter mischief occasioned by their curative action and implementation of the proviso by the department. The end result is that the legislature decided to restore the original position with respect to Section 19 (2) (v) by omitting and substituting with a new provision to remove the mischief caused by wrongful implementation. The actual intention of the legislature is to be derived only by interpretation of the provision to find out its actual applicability and decide whether it is curative or substantative. As already seen, the original provision along with the proviso was omitted and a new provision was substituted. The word "retrospective" would mean "to look back" or "to go back in time". A curative provision is held to be effective from a date prior to which it was enacted and so, will have a retrospective effect. As evident from the correct statement of objects and reasons and also from the contention of the Department that the amendment was brought in only to cure the defect and when it caused adverse effects, the same was withdrawn and substituted with a new provision, the time in that case is reversed. The amendments restore the benefit to all the dealers effecting interstate sale. As rightly pointed out by the counsel for the respondents, the subsequent amendment is in the form of "Declaration" reiterating that the provision is to be read as it stood before the 2013 amendment. Upon consideration of the materials placed before us and for the reasons stated above, the amendment to Section 19(2) brought about in the year 2015 is held to be curative in nature. Though we disagree with the reasoning of the learned Judge as to the interpretation placed on the scope of amendment to Section 19(2) vide Act 28 of 2013, in the light of

> the finding that Amendment Act 5 of 2015 is curative/declaratory in nature and would thus relate back to 11.11.2013, resultantly, the position insofar as the right of the manufacturers to avail ITC is, it becomes an absolute right, once the inputs are used in the manufacture or processing of the goods within the State, the subsequent event of the manufactured goods being sold by way of iner-state/intra-state sale would have no bearing nor does it result in imposing any limitation/ restriction or whittle down the right to ITC earned in terms of Section 19(2)(ii) or 19(2)(v) of the TNVAT Act in the interregnum period."

3. In light of the aforesaid categoric findings and conclusion of the Division Bench of this Court to the effect that the amendment to Section 19(2)(v) is curative and declaratory, the petitioner is entitled to the relief as sought and the impugned assessment order is set aside.

4. This Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The State Tax Officer,
Oragadam Assessment Circle,
Padappai – 601 301,
Kancheepuram District.

+1cc to the Special Government Pleader (Taxes), S.R.No.33227

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KK(CO)
PBS/15/06/2022