IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2023

CORAM :

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. Nos.5077 of 2021, 29609 & 29612 of 2022
and W.M.P. Nos.5652 of 2021, 28987 & 28990 of 2022

M/s.Veejay Lakshmi Engineering Works Limited, represented by its Whole-time Director, Mr.D.Renganathan	... Petitioner in W.P. No.5077 of 2021
M/s.Bright Foundaries Coimbatore Private Ltd., rep. by its Joint Managing Director Mr.S.Balraj	... Petitioner in W.P. Nos. 29609 & 29612 of 2022

vs

The Assistant Commissioner (ST), P.N.Palayam Assessment Circle, Coimbatore.	... Respondent in W.P. No. 5077 of 2021
The Assistant Commissioner (CT), Peelamedu North Circle, Coimbatore.	... Respondent in W.P. Nos. 29609 & 29612 of 2022

<ins>Prayer in W.P. No.5077 of 2021</ins> : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the impugned proceedings of the respondent in TIN/33332160003/2014-15 dated 10.03.2020 and quash the same.

Common Prayer in W.P. Nos.29609 & 29612 of 2022 : Petitions filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records of the respondent in TIN:33352122453/ 2013-14 and TIN:33352122453/2014-15 and quash the order dated 22.08.2022 passed therein.

For Petitioners in all W.P.s	: Mr.B.Raveendran
For Respondent in W.P. No.5077 of 2021	: Mr.C.Harsha Raj, Additional Government Pleader
For Respondent in W.P. Nos. 29609 and 29612 of 2022	: Mrs.K.Vasantha Mala Government Advocate

COMMON ORDER

The petitioners have challenged the impugned Assessment Orders dated 10.03.2020 and 22.08.2022 in these writ petitions.

2.Under all the assessment orders, the input tax credit claimed by the petitioners has been reversed and the respondents have directed the petitioners to pay the reversed amount. The reasons given for reversal of the input tax credit by the respondents are as follows:

a)The order of the High Court in W.P. Nos.7969 of 2014 etc. batch cannot be applied to the case of the petitioners as they were not parties to the said writ petitions;

b)In Act 5 of 2015, the Government has withdrawn the proviso to Section 19(2)(v) of the Tamil Nadu Value Added Tax Act 2006 with effect from 01.04.2015 and the provision was substituted with effect from 11.11.2013. Therefore, according to the respondents, the provision is in force from 11.11.2013 to 31.03.2015.

3.The petitioners have challenged the impugned assessment orders on the ground that by total non application of mind to the common order passed by this Court in W.P. Nos.7969 of 2014 etc. batch, the impugned orders have been passed. According to the petitioners, they are entitled for input tax credit and erroneously, by total non application of mind, the same has been reversed under the impugned assessment orders.

4.It is brought to the notice of this Court by the learned Additional Government Pleader appearing for the respondents in both the writ petitions that as against the order passed by a learned Single Judge in W.P. Nos.7969 of 2014 etc. batch, Appeals were preferred by the State, which were partially allowed vide common order dated 31.03.2022 in W.A. Nos.1260 of 2017 etc. batch. The learned Single Judge of this Court, in a case involving a similar issue, wherein also the very same grounds that have been raised in this writ petitions were considered, has held by a common order dated 29.06.2022 in W.P. Nos.11695 and 11698 of 2022 in the case of M/s.Magna Electro Casting Ltd. vs. The Assistant Commissioner (ST) (FAC), Coimbatore as follows:

> *'Read this order in conjunction with order dated 06.06.2022 reading as follows:*
>
> > *Mr.C.Harsha Raj, learned Additional Government Pleader accepts notice for respondent and seeks some time to obtain instructions and file a counter.*
> >
> > *2.Prima facie, these writ petitions appear to be squarely covered by the decision in The State of Tamil Nadu represented by its Secretary, Commercial Taxes Department, Fort St. George, Chennai-600 009 and another vs. M/s.Everest Industries Limited (W.A. No.1260 of 2017 dated 31.03.2022). Let there be no recovery till the next date of hearing.*
> >
> > *3.List on 29.06.2022. Counter by then after service upon the petitioner.*
>
> *2.Today learned Additional Government Pleader would fairly accede to the position that the issue that arises for resolution, being reversal of input tax credit (ITC) in terms of Section 19(2)(v) of the Tamil Nadu Value Added Tax Act, 2006 is covered in favour of the petitioner in light of the decisions in the case of State of Tamil Nadu vs. Everest Industries [100*

VST 158] and Bharath Traders vs. Commissioner of Commercial Taxes, W.P. (MD) No.15103 of 2015 dated 30.08.2019.

3.In view of the aforesaid decision, this issue is liable to be decided in favour of the petitioner. Hence, reversal, to this extent is set aside and these writ petitions are allowed to the extent to which the challenge is directed towards reversal of ITC relating to Section 19(2)(v). Connected miscellaneous petitions are closed. No costs.'

5.The petitioners are also similarly placed and being identical matters, the aforesaid decisions will apply to the case of these writ petitioners also. In fact, the Division Bench of this Court, in a batch of Writ Appeals in W.A. Nos.1260 of 2017 etc. batch, by its decision dated 31.03.2022 referred supra, while partially allowing the above Writ Appeals, has observed as follows:

'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 inter-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.'

6.The two reasons given by the respondents for reversing the input tax credit have been answered by the Division Bench as well as the learned Single Judge in the aforesaid orders in favour of the petitioners. Therefore, this Court is of the considered view that the impugned assessment orders have to be necessarily quashed and the writ petitions will have to be allowed. Accordingly, the impugned orders dated 10.03.2020 and 22.08.2022 are hereby quashed and the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

13.02.2023

Index:Yes/No
vga

To

1.The Assistant Commissioner (ST),
P.N.Palayam Assessment Circle,
Coimbatore.

2.The Assistant Commissioner (CT),
Peelamedu North Circle,
Coimbatore.

ABDUL QUDDHOSE, J.

vga

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