IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.11.2023

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.P.No.537 of 2018
AND
W.M.P.No.648 of 2018

M/s.Nadi Airtechnics P Ltd.
Rep. by its Chief Financial Officer
No.34, GNT Road, Ponnianmedu
Madhavaram
Chennai 600 060 .. Petitioner

Vs.

The State Tax Officer
Madhavaram Assessment Circle
Madhavaram
Chennai .. Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records of the respondent in his proceedings in TIN/33811082263/2014-15, quash the notice dated 08.12.2017 issued therein insofar as it relates to the proposal to reverse the Input Tax Credit under Section 19(2)(v) of the Tamil Nadu Value Added Tax, 2006.

For Petitioner : Mr.R.L.Ramani
Senior Advocate

For Respondent : Mr.Prashanth Kiran
Government Advocate

ORDER

(Order of the court was made by R. MAHADEVAN, J.)

This writ petition has been filed challenging the notice in TIN/33811082263/2014-15 dated 08.12.2017 passed by the respondent.

2.It is the case of the petitioner that they are manufacturing industrial exhaust fans and electrical fans, for which, they used to purchase raw materials from registered dealers within the State on payment of tax and such tax suffered inputs are used by the petitioner in the manufacture of the final product, ie., Industrial Exhaust Fans and Electrical Fans. The said goods were sold within the State and also to dealers in other States. The inter-state sales, when supported by 'C' declaration forms would come under Section 8(1) of the CST Act and attract tax @ 2% and the sales which are not supported by 'C' declaration forms would come under 8(2) of the CST Act and the rate of tax is the rate applicable under the local Act. Due to the amendment made to Section 19(2) of the TNVAT Act, when goods are purchased locally from registered dealers within the State on payment of TNVAT and sold on inter-state basis supported by 'C' declaration forms, then Input Tax Credit in excess of 3% shall be allowed to such dealer. While so, the respondent issued the impugned notice dated 08.12.2017 for the assessment year 2014-15, calling upon the petitioner to pay the Input Tax Credit reversal amount. Challenging the notice, the petitioner is before this Court.

3.The grounds raised in the writ petition are that the respondent has ignored the fact that Section 19(2) of the TNVAT Act will apply only in cases falling under Section 19(2) of the TNVAT Act and therefore, the said proviso will apply only when local tax suffered goods are purchased for the purpose of sale under Section 8(1) of the CST Act and that when Section 19(2) of the TNVAT Act restricts availing of Input Tax Credit in cases falling under sub-clause (v) to Section 19(2) of the TNVAT Act, the respondent's act of extending the application of the proviso to other sub-clauses of Section 19(2) of the TNVAT Act is absolutely unsustainable.

4.The learned counsel appearing for the petitioner submitted that the issue involved herein is covered by the judgment of this Court in ***The State of Tamil Nadu and Others Vs. Everest Industries Limited*** reported in **MANU/TN/2953/2022.**

5.On the other hand, the learned Government Advocate appearing for the respondent has submitted that the Hon'ble Supreme Court has granted stay in the SLP preferred by them against the judgment referred *supra* and accordingly placed a copy of the stay order dated 25.07.2023 before us. Therefore, the learned counsel sought liberty to the respondent to decide the issue afresh on the basis of the final verdict to be rendered by the Apex Court.

6.This court has considered the submissions made by the learned counsel on either side and also perused the records.

7.The impugned notice was issued in the year 2017 and the writ petition was filed in the year 2018. After admission, only now the matter is listed before us. Taking note of the facts and circumstances of the case, the petitioner is given liberty to file reply to the impugned show cause notice mentioning the present position of law, within a period of four weeks from the date of receipt of a copy of this order. On receipt of such reply from the petitioner, the matter shall be decided afresh on the basis of the final verdict to be rendered by the Apex Court.

8.The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.]　　[M.S.Q, J.]
22.11.2023

Neutral Citation : Yes/No
gya

To
The State Tax Officer
Madhavaram Assessment Circle
Madhavaram
Chennai

R. MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

gya

W.P.No.537 of 2018

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