IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : **04.10.2023**
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.24295 of 2021
and
W.M.P.No.25611 of 2021

M/s. Nixon Engineering
rep. by its Proprietor,
Mr.L.Antony ...Petitioner

Vs.

The Commercial Tax Officer,
now designated as the State Tax Officer,
Pattravakkam Assessment Circle,
No.571, Anna Salai, Integrated Commercial
and Registration Building,
Room No.412, 4th Floor, Nandanam,
Chennai – 600 035. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN/33322364517/2014-15, dated 02.01.2017, and the connected impugned proceedings in TIN/33311364517/2014-15 dated 06.09.2021 and to quash the above said proceedings as passed in contraventions of the provisions of the TNVAT Act, 2006.

For Petitioner : Mr.P.Rajkumar

For Respondent : Ms. Amirtha Dinakaran
Government Advocate

ORDER

This Writ Petition is filed challenging the proceedings of the respondent dated 02.01.2017 and the connected proceedings dated 06.09.2021 and to quash the said proceedings.

2. The issue that arises for consideration in this Writ Petition is whether proviso to Section 19(2) (v) of the Tamil Nadu Value Added Tax Act, 2006 (in short, TNVAT Act) introduced by Act 28 of 2013, which restricts the availment of input tax credit (ITC) in excess of 3% of tax is applicable only to traders and not to manufacturers, (since the petitioner herein is a manufacturer of automobile engineering parts).

3. At the threshold, Mr.P.Rajkumar, learned counsel appearing for the petitioner would submit that the issue involved in this Writ Petition is squarely covered by a decision rendered by the Hon'ble Division Bench of this Court, in the case of **State of Tamil Nadu, rep. by its Secretary, Commercial Taxes Dept. and another Vs. M/s.Everest Industries Ltd., rep. by its Senior Manager-Finance Podanur Post, Coimbatore, in W.A.No.1260, 1508, etc. batch of 2017, dated 31.03.2022.**

4. Ms. Amirtha Dinakaran, learned Government Advocate also fairly conceded that the issue involved in this Writ Petition is covered by the decision relied on by the learned counsel appearing for the petitioner.

5. Heard the learned counsel appearing for both sides.

6. The issue involved in this Writ Petition is no longer *res integra,* as the Hon'ble Division Bench of this Court, in a decision in the case of **M/s.Everest Industries Ltd.,** (cited supra) has taken into consideration the entire legal gamut of case laws on the issue and culled out *ratio decidendi* an it would be beneficial to refer the operative portion of the said decision which is reproduced as under:-

"... 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 a 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 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 interregnum period.

140. In the light of the view expressed by us on the scope of the curative/declaratory nature of Amendment to Section 19 (2) vide Act 5 of 2015, there is a possibility that the State may have to deal with the claims of refund on account of excess ITC to the credit of the assessees, consequent to the above view."

7. Thus, in the light of the law laid down by the Hon'ble Division Bench in the case of **M/s.Everest Industries Ltd.,** (cited supra), this Court holds that the petitioner is entitled to the benefit available under Section 19(2)(v) of the TNVAT Act.

8. Accordingly, this Writ Petition is allowed, the impugned order, reversing the ITC, dated 02.01.2017 as well as the consequential order, levying penalty, dated 06.09.2021 are set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

04.10.2023

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Index : yes/no

To

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Krishnan Ramasamy,J.,

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