IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.01.2025

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.30997 of 2022
and W.M.P.No.30393 of 2022

M/s.Nagaraj & Company Pvt. Ltd.
Rep. by its Director Mr.M.S.Raju Seshadirinathan,
No.156, Industrial Estate,
2nd Main Road, Perungudi,
Chennai – 600 096.

...Petitioner

Versus

The Assistant Commissioner (ST),
Sholinganallur Assessment Circle,
Integrated Commercial Taxes Building,
Nandanam, Chennai – 600 035.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the records of the respondent in TIN/33980920907/2014-15 dated 31.10.2022 quash the same.

For Petitioner	:	Mr.V.Sundareswaran
For Respondent	:	Mr.V.Prashanth Kiran, Government Advocate

ORDER

In this writ petition, the Petitioner has challenged the Order dated 31.10.2022 bearing TIN/33980920907/2014-15 (hereinafter referred to as "Impugned Order") passed by the Respondent.

2. The facts on record reveal that the Petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (for brevity, "TNVAT Act") and under the Central Sales Tax Act, 1956 (for brevity, "CST Act") engaged in the business of printing.

3. It is stated that in the course of its business, the Petitioner purchased goods within the state from a registered dealers under the TNVAT Act for the purpose of printing and effecting intra-state and inter-state sales.

4. For the Assessment Year CST 2014-15, monthly returns were filed declaring the total and taxable turnover under the TNVAT Act as well as CST Act and assessments were completed by the Respondent under deemed

assessment and thereafter, on 16.06.2017, orders were passed by the Respondent.

5. It is stated that this being the case, the Respondent issued a Notice dated 06.05.2022 proposing to reverse the Input Tax Credit (ITC) claimed by the Petitioner stating that the turnover was not covered by Form 'C' Declaration under Section 19 of the TNVAT Act.

6. The impugned order passed by the Respondent has been primarily assailed on the ground that the issue involved herein is no longer *res integra* and is squarely covered by the Division Bench of this Court in ***The State of Tamil Nadu & Anr. Vs. M/s.Everest Industries Limited*** *(2022) 4 TMI 1204*. Relevant portion of the judgment passed therein is extracted hereunder:

> *"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 substantive. 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 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."

7. Later, in a case of similar nature, this Court followed the decision rendered by the Division Bench of this Court in ***The State of Tamil Nadu & Anr. Vs. M/s.Everest Industries Limited*** *(2022) 4 TMI 1204* and allowed a writ petition in W.P.12347 of 2022 vide Order dated 07.06.2022.

8. Thus, following the aforesaid decision, I am inclined to quash the Impugned Order passed by the Respondent and allow this writ petition.

9. Accordingly, the Impugned Order dated 31.10.2022 bearing TIN/33980920907/2014-15 passed by the Respondent is quashed and this Writ Petition is allowed with a direction to the Respondent to decide the case in the light of the decision rendered by the Division Bench of this Court in ***The State of Tamil Nadu & Anr. Vs. M/s.Everest Industries Limited (2022) 4 TMI 1204,*** within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

22.01.2025

mrr

Index : Yes/No

To

The Assistant Commissioner (ST),
Sholinganallur Assessment Circle,
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C.SARAVANAN, J.

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