



WEB COPY



TCR (MD) No.1 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2024

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**
and
THE HON'BLE Mr.JUSTICE **K.K.RAMAKRISHNAN**

TCR (MD) No.1 of 2024

The State of Tamilnadu
rep.by the Joint Commissioner (CT)
Tirunelveli Division

... Appellant

Vs.

Tvl. The Madras Cements Limited
R.R.Nagar,
Virudhunagar

... Respondent

Prayer:

Tax Revision Case filed under Section 60 of the Tamilnadu Value Added Tax Act, 2006 to set aside the order dated 22.09.2023 passed by the Tamilnadu Sales Tax Appellate Tribunal (AB) Madurai in M.T.S.A. No. 339 of 2017 and confirm the order passed by the Assessing Authority.

For Appellant : Mr. A.K.Manikkam
Special Government Pleader

For Respondent : Mr.S.Karunakar

J U D G M E N T

V.BHAVANI SUBBAROYAN J.,

The present Revision is filed seeking to set aside the order dated



TCR (MD) No.1 of 2024

22.09.2023 passed by the Tamilnadu Sales Tax Appellate Tribunal (AB) Madurai in MTSA No.3339 of 2017 and confirm the order passed by the Assessing Authority.

2. The brief facts of the case are as follows:-

(i) The respondent, who is the registered dealer in an assessment circle of Assistant Commissioner (CT)-3, Virudhunagar claimed ITC of Rs. 1,07,79,215/- by its return submitted for the assessment year 2006-2007 under Section 21 of Tamilnadu Value Added Tax Act, 2006, [hereinafter referred to as TNVAT, 2006]. The Assessing Authority by an order dated 10.09.2013 disallowed the ITC to the tune of Rs.28,63,208/-. As against the same, the respondent preferred an appeal before the Appellate Deputy Commissioner (CT) Virudhunagar in A.P. No.55/2013 and by an order dated 23.12.2015, the said appeal was allowed by taking note of the Judgment of Hon'ble Supreme Court in the case of Vikram Cement that explosives, lubricating oils used in mines have been held to be inputs eligible for availment of Cenvat under Central Excise Rules. Not being satisfied with the said order, the State has preferred the present appeal.

3. The learned counsel for the appellant challenges the impugned order on three grounds, (i) There is a incorrect calculation of reversal of



TCR (MD) No.1 of 2024

credit on donation sales to certain institutions along with inter-state stock transfer etc., to the tune of Rs.23,22,640/- (ii) ITC is ineligible in RR Nagar unit for the year 2006-2007 (iii) ITC is ineligible on lubricants, explosive materials used in Mines, Mining Machineries and its spares, consumables like electrodes. Further, instead of remanding the issue of ITC reversal, Tribunal has allowed reversal of ITC, which is not sustainable in the interest of Revenue, hence pleaded to allow the appeal.

4. Per contra, the learned counsel for the respondent submitted that the manufacture of cement is a continuous process, commencing from extracting lime stones, from quarries, grinding the same into cement after undertaking various process of heating, powdering, mixing and ultimately packing the same for marketing. The disputed ITC is relatable to purchase of parts, accessories and components for the machinery already installed and processing of goods, the respondent is eligible to claim the ITC for those purchases. Further, the respondent-concern, is eligible to claim ITC relating to purchases of consumables like explosives, welding rods and lubricants, which are used in machineries for mining operation and in the factory for running the machinery installed, thereby pleaded to confirm the order passed by the appellate authority and to dismiss the present Revision.



TCR (MD) No.1 of 2024

5. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the documents placed on record.

6. On considering the facts and circumstances of the case and the contentions made on either side, the following issues arises for consideration:-

1. Whether the respondent has established about the genuine purchase of said category of goods for allowing the claim of ITC?

2. Whether the reversal of ITC is sustainable in the interest of revenue?

7. The question raised in this case revolves around an interpretation of the statutory provisions, specifically touching upon the eligibility or otherwise to ITC. The facts are undisputed. The appellant is seeking to adopt a categorical view that the respondent is not entitled to ITC in a situation where the lubricants and explosives are not used as raw materials for the manufacturing of cement, an exempt product, though admittedly such exempt product is not sold as an independent commodity.

8. It is to be noted that Section 19(5)(c) is very specific to state that it is only sale of exempted products that would result in denial of ITC on inputs. There is nothing therein to suggest and hence support the proposition that mere purchase / generation and consumption of fuel / electricity respectively would attract the bar under Section 19(5)(c).



9. In order to answer the 1st question, it is important to extract Section 2(11) 'Capital goods', which stipulates that,

(a) Plant, machinery, equipment, apparatus, tools, appliances or electrical installation for producing, making, extracting or processing of any goods or for extracting or for bringing about any change in any substance for the manufacture of final products

(b) Pollution control, quality control, laboratory and cold storage equipments;

(c) Components, spare parts and accessories of the goods specified in (a) and (b) above;

(d) Moulds, dies, jigs and fixtures;

(e) Refractors and refractory materials ;

(f) Storage tanks ; and

(g) Tubes, pipes and fitting thereof;

wherein, used in the state for the purpose of manufacture, processing, packing or storing of goods in the course of business excluding civil structures and such goods as may be notified by the government.

10. From the above, it is clear that Section 2(11) of TNVAT, 2006, 'Capital Goods' not only includes plant and machinery, equipment's apparatus, tools, appliances or electrical installation for producing, making extracting or processing of any goods or for extracting or for bringing about any change in any substance for the manufacture of final products, it also includes goods used for post manufacturing of other goods including pollution control equipment's quality control equipment, laboratory and



TCR (MD) No.1 of 2024

spares components accessories etc., hence, concluded that the wind mill used by the respondent qualifies as 'capital goods' as long as it is used for the purpose of manufacture, processing, packing or storing of the goods in the course of business.

11. The question that arose was whether the aforementioned materials would come within the meaning of the expressions 'raw material' or 'processing material' or 'consumable stores'. On earlier occasion, the Hon'ble Bench recorded that the parties had referred to the tests laid down in Ballarpur Industries and J.K.Cotton on the one hand and Coastal Chemicals Limited on the other and directed the Gujarat High Court to reconcile which line of decisions should be applied while deciding the question framed by them.

12. In Ballapur Industries (supra), rendered in the context of the Central Excise and Salt Act of 1944, the Hon'ble Supreme Court considered the meaning of the term 'raw material' in the context of whether such raw material should be discernible in the end product in order to satisfy such usage. The Bench considered that several ingredients used in the manufacture of any end product might be consumed in the process of manufacture itself, while some may retain their dominant individual identity and character and may still be discernible in the end product. Thus, for an



item to qualify as a raw material, it need not necessarily find place in the end product.

13. In the case of Commercial Taxation Officer, Udaipur V. Rajasthan Taxchem Ltd. ((2007) 5 VST 529, it was the interpretation of Section 2(34) of the Rajasthan Sales Tax Act, 1994 (in short 'RST Act') that came up for consideration. The statutory provision has been extracted in paragraph 7 of that judgement and reads as under:-

'7. It is also beneficial to reproduce the definition of "raw material" which reads as under:-

"Section 2(34). 'Raw material' means goods used as an ingredient in the manufacture of other goods and includes preservatives, fuel and lubricant required for the process of manufacture."

14. That apart, this Court, in W.P.Nos.4487, 4488 of 2008 etc., batch in the case of Sri Kannapiran Mills Limited Vs. The Assistant Commissioner, at paragraph no.45 has held as follows:-

"45. A lower rate of tax had been paid on a raw material used in the manufacture of final product. The Assessing Officer had held that since diesel was not used directly for the manufacture of the final product, the benefit of low tax claimed by the petitioner was not liable to be accepted. The Court noticed that there was a list of raw materials that had been annexed to the Registration Certification of that petitioner which included fuel and lubricants and, in light of such provision in Section 2(34), accepted the assessee's claim for lower



TCR (MD) No.1 of 2024

rate of tax.

WEB COPY

In light of the abovesaid detailed discussion and the overwhelming conclusion arrived at by the Courts in the judgements cited and discussed, the impugned order is perfectly valid in the eye of law and the present Appeal fails and the same is dismissed. The substantial questions raised are answered against the petitioner. No costs.

(V.B.S.,J.) (K.K.R.,J.)
11.09.2024

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking Judgment

ssd

To
Tvl. The Madras Cements Limited
R.R.Nagar,
Virudhunagar



TCR (MD) No.1 of 2024

**V.BHAVANI SUBBAROYAN J.
and
K.K.RAMAKRISHNAN J.**

ssd/sbn

T.C.(R) (MD) No.1 of 2024

11.09.2024