

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2015

CORAM :

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Writ Petition Nos. 17420 to 17423 of 2015

M/s.Global Calcium P. Ltd.,
rep. by its Senior Manager-
Commerical

...Petitioner in all the W.Ps.

Vs

The Assistant Commissioner
(Commercial Taxes)
Hosur (North)

...Respondents in all the W.Ps.

Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records on the file of the respondent in TIN 33473320059/9-10, 10-11, 11-12, 12-13 respectively, dated 27.04.2015 and quash the same.

For petitioner in
all W.Ps.

: M/s. Adithya Reddy

For respondents in
all W.Ps.

: Mr.ANR.Jayapratap, GA (T)

सत्यमेव जयते
COMMON ORDER

Heard the learned counsel for the petitioner and Mr.A.N.R.Jayapratap, learned Government Advocate (T) who took notice for the respondent.

2. These writ petitions have been filed by the petitioner challenging the impugned orders dated 27.04.2015, passed by the respondent herein.

3. The subject matter in these writ petitions are related to payment of VAT on the invisible loss of yarn pursuant to manufacturing activity. The said issue has been decided by this Court in a batch of writ petitions in W.P.Nos.13901, 30852 to 30880 of 2013 in the case of "Interfit Techno Products Ltd., vs. The Principal

Secretary, Commissioner of Commercial Taxes", by order dated 26.11.2014.

4. Since the matter has been covered by the decision of this Court, the learned counsel for the petitioner confined his prayer related to invisible tax alone and seeks this Court to grant similar order.

5. Learned Additional Government Pleader appearing for the respondent submitted that the order of this Court in paragraph 47 & 63 is squarely covered in respect of the dealers therein and as far as the present petitioner is concerned the same is applicable.

6. The relevant portion of the order in W.P. Nos.13901, 30852 to 30880 of 2013 reads as follows:

"47. The decision in the case of Steel Authority of India Ltd., Vs. Collector of Central Excise [1996 (88) E.L.T. 314 (SC)] is an appeal filed challenging the order passed by the CEGAT and the question was whether the appellant was entitled for concessional rate of duty. The exemption notification provided for exemption in respect of raw naphtha which is intended in the use of manufacture of fertiliser exempting the manufacturing process. It was held that raw naphtha is utilised in its plant for the manufacture of fertiliser and the benefit of exemption notification is extended. In the present proceedings, the petitioner has approached this Court by way of writ petitions challenging the circular as well as the orders of assessment which are in most cases exparte orders since the dealer did not respond to the show cause notice. The assessing officer also made an adhoc assessment and adopted a uniform percentage stating that the same is treated as "invisible loss" and direction was issued to reverse the ITC. The net result is there has been no examination of the manufacturing process as to what is the actual manufacturing loss or production loss or invisible loss. This cannot be done without examining each manufacturing process or identical manufacturing process. Infact, the association of Textile Exporters were granted liberty by the Honourable Division Bench to make a demonstration before the concerned assessing officer. It is not known as to why they did not avail such opportunity which should have been availed as it is the appropriate method for ascertaining as to whether on facts there is a process loss or a manufacture loss. Therefore, the decision does not render support to the case of the petitioner.

63. In the result,

(1) the challenge to the impugned circular is held to be unnecessary since the circular is a non statutory circular and is in the nature of guideline and the prayer for quashing the circular is rejected.

(2) Section 18 of the TNVAT Act is not an independent or a separate stand alone provision under the provisions of TNVAT Act but subject to other provisions of the Act including Section 19 of the VAT Act.

(3) For the reasons assigned, it is not sufficient for a dealer claiming refund under Section 18(2) of the Act to show that he has paid input tax on the goods purchased; that those goods are used in the manufacture and nothing more but there is duty upon the dealer to satisfy the Assessing Authority that the claim is not hit by any of the restrictions or conditions contained under Section 19 of the VAT Act. In this regard, it is essential for the Assessing Authority to embark upon the fact finding exercise to ascertain the quantum of loss of the goods which were purchased on which tax was paid vis-a-vis the goods manufactured from and out of the goods purchased and to examine as to whether they fall within any of the restrictions contained in Section 19 of the VAT Act. The Assessing Officer has to conduct an exercise by which it is to be ascertained as to whether the representation made by the dealer is justified and is not hit by any any of the restrictions and conditions contained in Section 19 and in particular Section 19(9) of the VAT Act.

(4) It is held that the Assessing Authorities are not justified in adopting uniform percentage as invisible loss and calling upon the dealer to reverse the input tax credit availed to that extent. Consequently, all notices issued to the petitioner for reopening and all consequential order passed reversing the input tax credit to the extent of either 4% or 5% or on adhoc per centage stands set aside. However, liberty is granted to the concerned Assessing Officer to issue appropriate show cause notices to the petitioners clearly setting out under what circumstances they propose to revise or call upon the petitioner to reverse refund sanctioned and after inviting objections proceed in accordance with law.

(5) The undertaking given by the dealer in Form W is with regard to information furnished for the purpose of verification by the Assessing Officer under Rule 11 (2) of the VAT Rules for being entitled to refund under Section 18(2). Therefore, it is not as if the Act does not provide a remedy in the event of a wrong or erroneous refund sanctioned when Section 18 cannot be treated as an independent provision but subject to restrictions and conditions under Section 19 of the VAT Act.

7. In the view of the above, these writ petitions are disposed of in the light of the order passed in the batch of writ petitions referred above on 26.11.2014. The directions given therein shall be followed by the respondent while passing fresh orders in respect of the issue related to invisible loss. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

smi

To

The Assistant Commissioner
(Commercial Taxes)
Hosur (North).

1 CC to M/s. Adithya Reddy, Advocate SR.No. 41688

1 CC to the Spl. Government Pleader (T), SR.No. 41910

W.P. Nos. 17420 to 17423 of 2015

KJI (CO)
PSI (03.09.2015)