IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.3458 to 3463 of 2015
And
M.P.Nos.1 of 2015

Raja Crowns and Cans Pvt. Ltd. Petitioner in all the WPs.
Plot No.70B 70C Sipcot Phase II
Hosur- 635109
Rep. by its General Manager
R.Chandramohan.

Vs

The Assistant Commissioner(CT)
Hosur (North) Hosur. Respondent in all the WPs.

Petitions filed under Article 226 of the Constitution of India to issue a Writ of certiorari to call for the records of the order dated 19.12.2014 in TIN No.33613322297/2008-2009 to 2013-2014 respectively passed by the respondent and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.Manoharan Sundaram, AGP(T)

C O M M O N O R D E R

Heard the learned counsel for the petitioner and the learned Government Advocate (Taxes) for the respondent.

2. These writ petitions are filed challenging the orders of the respondent 19.12.2014.

3. When the matter is taken up for hearing, it is submitted by the learned counsel on either side that the issue involved in this writ petition is covered by the decision of this Court dated 26.11.2014 made in W.P.Nos.13901, 30851 to 30880 of 2013 etc., batch.

4. In the said order dated 26.11.2014 made in W.P.Nos.13901, 30851 to 30880 of 2013 etc., batch, the learned Judge has elaborately dealt with the issue and disposed of the writ petitions, the operative portion of which reads as follows:-

" 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.

64. The Writ petitions are disposed of accordingly. No costs. Connected MPs are closed".

5. In view of the above, the present writ petitions are also disposed of on the same terms. No costs. Connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

rg

To
The Assistant Commissioner(CT)
Hosur (North) Hosur.

+ 1 cc to Special Government pleader Advocate SR.No.7582
+1cc to Mr.Adithya Reddhy, Advocate SR.No.7363

W.P.Nos.3458 to 3463 of 2015

NM(CO)
Eu 24.02.15