IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.11.2016

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The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.15279 to 15281 of 2016

M/s.Sri Ranganathar Valves Private Limited.,
12/45, Thadagam Road,
Edayarpalayam (PO) Coimbatore - 641 025.
...Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (CT) (FAC)
Velandipalayam Assessment Circle,
Coimbatore. ...Respondent in all W.Ps.

W.P.No.15279 of 2016

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the respondent in TIN No.33296204731/2014-15, and to quash the order, dated 07.04.2016, passed therein insofar it reverses the Input Tax Credit, claimed by the petitioner to the extent of Rs.3,65,202/- and to direct the respondent to refund the said sum of Rs.3,65,202/- to the petitioner herein.

W.P.No.15280 of 2016

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the respondent in TIN No.33296204731/2014-15, and to quash the order, dated 07.04.2016, passed therein insofar it reverses the Input Tax Credit, claimed by the petitioner to the extent of Rs.3,72,860- and to direct the respondent to refund the said sum of Rs.3,72,860- to the petitioner herein.

W.P.No.15281 of 2016

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the respondent in TIN No.33296204731/2014-15, and to quash the order, dated 07.04.2016, passed therein insofar it reverses the Input Tax Credit, claimed by the petitioner to the extent of Rs.4,11,613/- and to direct the respondent to refund the said sum of Rs.4,11,613/-to the petitioner herein.

For Petitioner : M/s.Hema Muralikrishnan

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader (Tax)

COMMON O R D E R

Since the issue involved in these Writ Petitions is identical in nature, they have been taken up together and disposed of by this common order.

2. The petitioner is a registered dealer on the file of the respondent/Assistant Commissioner (CT) (FAC), under the provisions of Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and Central Sales Tax Act, 1956 (CST Act). The petitioner is a manufacturer of castings and valves out of the raw materials purchased from the local registered dealers. They have been duly filing monthly returns in accordance with the provisions of TNVAT Act. The petitioner states that, as per Section 18 (2) of TNVAT Act, read with Rule 11 (2) of TNVAT Rules, 2006, Exporters are eligible to claim refund of the tax paid by them to the local registered dealers on the goods that are purchased within the State. The petitioner, being Exporter, has filed Form W for refund of Input Tax Credit (ITC) in respect of the exports effected in the months July, 2011 to February 2013, within the stipulated time, as prescribed under the Act. The respondent has passed the impugned order, in and by which, the petitioner's claim for ITC has been reversed on the ground that the ITC claimed on the capital goods is not eligible to be refunded to the dealer/petitioner, and restricted the claim of refund, by estimating 5% of the purchase value to be 'Invisible Loss' and 1% of the Export sales turnover to be 'Visible Loss'. Challenging the same, the present Writ Petitions are filed.

3. The learned Additional Government Pleader fairly submits that the issue involved in these Writ Petitions is covered by the decision rendered by this Court, in the case of (M/s.Interfit Techno Products Ltd1.The Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai) reported in (2015) 81 VST 389.

4. At this stage, it would be beneficial to refer to the relevant portions of the order passed by this Court, in the case of M/s.Interfit Techno Products Ltd's (referred supra) which is extracted herein below:-

" ....(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. Following the above decision, the Writ Petitions stand disposed of on the same lines, with direction as referred supra. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Assistant Commissioner (CT) (FAC)
Velandipalayam Assessment Circle,
Coimbatore.

+1 cc to Mr.L.Murali Krishnan Advocate sr 62989/2016

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