In the High Court of Judicature at Madras

Dated : 28.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.41670 to 41680 of 2016

M/s.Shri Ranganathar Valves Private Limited, rep.by its Managing Director Mr.V.Narayanasamy ...Petitioner

Vs

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

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus

(i) to call for the records of the respondent herein in TIN No. 33296204731/2015-16, quash the order dated 24.10.2016 passed therein in so far as it reverses the Input Tax Credit claimed by the petitioner to the extent of Rs.1,02,256/- and direct the respondent to refund the said sum of Rs.1,02,256/- to the petitioner herein (WP.No.41670 of 2016);

(ii) to call for the records of the respondent herein in TIN No. 33296204731/2015-16, quash the order dated 24.10.2016 passed therein in so far as it reverses the Input Tax Credit claimed by the petitioner to the extent of Rs.54,759/- and direct the respondent to refund the said sum of Rs.54,759/- to the petitioner herein (WP.No.41671 of 2016);

(iii) to call for the records of the respondent herein in TIN No. 33296204731/2015-16, quash the order dated 24.10.2016 passed therein in so far as it reverses the Input Tax Credit claimed by the petitioner to the extent of Rs.55,046/- and direct the respondent to refund the said sum of Rs.55,046/- to the petitioner herein (WP.No.41672 of 2016);

(iv) to call for the records of the respondent herein in TIN No. 33296204731/2015-16 and quash the order dated 24.10.2016 passed therein in so far as it reverses the Input Tax Credit claimed by the petitioner to the extent of Rs.58,555/- and direct the respondent to refund the said sum of Rs.58,555/- to the petitioner herein (WP.No.41673 of 2016)

(v) to call for the records of the respondent herein in TIN No. 33296204731/2015-16, quash the order dated 24.10.2016 passed therein in so far as it reverses the Input Tax Credit claimed by the petitioner to the extent of Rs.38,954/- and direct the respondent to refund the said sum of Rs.38,954/- to the petitioner herein (WP.No.41674 of 2016)

(vi) to call for the records of the respondent herein in TIN No. 33296204731/2015-16, quash the order dated 24.10.2016 passed therein in so far as it reverses the Input Tax Credit claimed by the petitioner to the extent of Rs.20,056/- and direct the respondent to refund the said sum of Rs.20,056/- to the petitioner herein (WP.No.41675 of 2016)

(vii) to call for the records of the respondent herein in TIN No. 33296204731/2015-16, quash the order dated 24.10.2016 passed therein in so far as it reverses the Input Tax Credit claimed by the petitioner to the extent of Rs.45,002/- and direct the respondent to refund the said sum of Rs.45,002/- to the petitioner herein (WP.No.41676 of 2016)

(viii) to call for the records of the respondent herein in TIN No. 33296204731/2015-16, quash the order dated 24.10.2016 passed therein in so far as it reverses the Input Tax Credit claimed by the petitioner to the extent of Rs.34,599/- and direct the respondent to refund the said sum of Rs.34,599/- to the petitioner herein (WP.No.41677 of 2016)

(ix) to call for the records of the respondent herein in TIN No. 33296204731/2015-16, quash the order dated 24.10.2016 passed therein in so far as it reverses the Input Tax Credit claimed by the petitioner to the extent of Rs.9,82,481/- and direct the respondent to refund the said sum of Rs.9,82,481/- to the petitioner herein (WP.No.41678 of 2016)

(x) to call for the records of the respondent herein in TIN No.

33296204731/2016-17, quash the order dated 24.10.2016 passed therein in so far as it reverses the Input Tax Credit claimed by the petitioner to the extent of Rs.10,17,096/- and direct the respondent to refund the said sum of Rs.10,17,096/- to the petitioner herein (WP.No.41679 of 2016) and

(xi) to call for the records of the respondent herein in TIN No. 33296204731/2015-16, quash the order dated 24.10.2016 passed therein in so far as it reverses the Input Tax Credit claimed by the petitioner to the extent of Rs.8,28,931/- and direct the respondent to refund the said sum of Rs.8,28,931/- to the petitioner herein (WP.No.41680 of 2016).

For Petitioner : Mrs.Hema Muralikrishnan
For Respondent : Mr.K.Venkatesh, GA

COMMON ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956, is engaged in the manufacture of castings and valves out of the raw materials purchased from local registered dealers. The petitioner is stated to be selling the castings and valves within the State besides direct export under Section 5(1) of the Central Act. In these writ petitions, the petitioner has challenged the partial rejection of the petitioner's applications for refund of the input tax credit for the period from July 2015 to June 2016 and the prayer sought for in these writ petitions is

restricted only to that portion of the impugned orders, in and by which, the respondent rejected the refund claim.

3. It may not be necessary for this Court to refer to the findings rendered by the Assessing Officer in respect of the refund applications and it would suffice to take note of the applications made for refund of the input tax credit paid in respect of the purchases made by the petitioner during the month of April 2016.

4. Though several issues have been raised, the issues arising under the following three heads alone remain for consideration. The first head relates to reversal of input tax credit on wastage under Section 19(9) of the State Act. Under this head, there are two subsidiary issues namely (a) invisible loss and (b) visible loss. The second head relates to ineligible claim of input tax credit in respect of certain purchases effected by the petitioner, the claim having been disallowed, as those commodities were not exported. The third head is with regard to the claim of input tax credit on capital goods.

5. Before examining the reasons assigned by the Assessing Officer on the above three heads, it is to be pointed out that prior to passing the impugned orders, no show cause notice was issued to the petitioner as to the reason for proposing to reject the claim for refund under the above three heads. That apart, no personal hearing was afforded to the petitioner to substantiate their contentions.

6. This is sufficient to hold that the impugned assessment orders are in violation of the principles of natural justice. However, this Court would like

to examine as to whether the reasons assigned by the respondent on the above three heads are sustainable.

7. Firstly, with regard to reversal of input tax credit claim on wastage under Section 19(9) of the State Act, under which, there are two subsidiary issues namely invisible loss and visible loss, the respondent adopted a percentage of 5% and 1% respectively. The correctness of adopting uniform percentage came up before this Court in the case of ***Interfit Techno Products Ltd. Vs. The Principal Secretary and Commissioner of CT [reported in (2015) 81 VST 389]*** wherein this Court issued certain directions as to how the Assessing Officer should proceed to determine the invisible loss/visible loss and the operative portion of the directions issued is as follows :

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> *(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 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 of 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 four per cent or five per cent or on ad hoc percentage 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."

8. Thus, to ascertain as to whether there are quantum of loss of goods, which were purchased, on which, tax was paid, the Assessing Officer has to conduct an exercise, by which, he has to ascertain as to what would be the loss and uniform or ad hoc percentage cannot be adopted. To do so, it would be necessary for the Assessing Officer to conduct an inspection of the

place of business of the petitioner to acquaint himself with the manufacturing process. However, since the respondent has adopted a uniform percentage, the same calls for interference.

9. With regard to the second issue wherein the respondent rejected the claim for input tax credit on certain purchases effected on the ground that the commodities were not exported is concerned, the petitioner's case is that those products are used in the manufacture of other goods, which are exported, as specified under Sub-Section (1) of Section 8 of the State Act and they are entitled to avail the input tax credit. However, the petitioner had no opportunity to put forth their objections on the above head.

10. Furthermore, some what a similar issue considered by this Court in the case of ***Anurag Valve Castings Ltd. Vs. AC(CT) and another [WP.No.34337 of 2015 dated 9.11.2016]*** wherein the petitioner was engaged in the manufacture of alloy steel castings and purchased consumables like sodium silicate, silica sand, carbon di oxide and liquefied petroleum gas for the purpose of manufacture of moulds, which were used in the manufacture of valves and other products, which were exported. Since the input tax credit was denied, the petitioner was before this Court. This Court, after taking into consideration the legal position as well as the decision of this Court in the case of ***Sara Leathers Vs. C.T.O. [reported in (2010) 30 VST 581],*** held as follows :

> *"3. In Sara Leathers Vs. Commercial Tax Officer, Tambaram I Assessment Circle, Chennai reported in (2010) 30 VST 581 (Mad.), this Court*

considered the scope of Section 18 of the TNVAT Act with particular reference of Section 18(2) of the TNVAT Act and pointed that Section 18(2) of the TNVAT Act is emphatic in its wording, the dealer referred to therein to claim a refund is one who had paid the tax on purchase of those goods that are exported and such consumed goods used in the manufacture of other goods, which are exported and are specified under Sub-Section (1) and in the said case, the petitioner was held to be entitled to the total refund. Thus, the respondent should consider the petitioner's case based on the stand taken by them that the raw materials purchased by them are used in the manufacture of other goods that are exported as specified in Sub-Section (1) of Section 18. This aspect having not been considered, the matter requires reconsideration.

4. Accordingly, the writ petition is allowed and the impugned order is set aside and the matter is remanded to the first respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner and reconsider the matter in the manner indicated in this order. Before reconsideration, the first respondent is directed to cause an inspection of the petitioner's factory after issuance of advance notice to the petitioner so as to acquaint himself with regard to the manufacturing process of the petitioner and then take a decision in accordance with law."

11. Therefore, the aforesaid exercise has to be necessarily done by the Assessing Officer before out rightly rejecting the claim for input tax credit on the purchases effected. Therefore, the findings under the said head call for interference.

12. The last issue is with regard to the rejection of the claim for refund of input tax credit on capital goods. The respondent has not assigned any specific reasons for rejection, but stated that the claim is in dispute. The nature of the dispute has not been spelt out in the impugned order. That apart, the petitioner did not have any opportunity to put forth their objections. Therefore, the findings rendered by the respondent on all the above three heads call for interference.

13. Accordingly, the writ petitions are allowed by setting aside the findings of the respondent on the above three heads and the respondent is directed to issue a show cause notice to the petitioner on all the above three heads. On receipt of the notice, the petitioner shall file their objections and

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on receipt of the objections, the respondent shall cause an inspection of the petitioner's factory to acquaint himself regarding the manufacturing process so as to enable him to ascertain the invisible loss and the visible loss and thereafter, after affording an opportunity of personal hearing to the petitioner, redo the assessment on the above three heads by passing a speaking order in accordance with law. No costs.

28.11.2016

Internet : Yes

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