BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.3847 and 3848 of 2015

and

M.P.(MD)No.1 and 1 of 2015

M/s.Karur K.C.P. Packagings Limited,
Represented by its Director Mr.V.S.Murali Krishnan,
No.330/1, Chinna Andankoil Road,
Karur. : Petitioner in both W.P.s.

Vs.

The Assistant Commissioner (CT),
Karur South Assessment Circle,
Karur. : Respondent in both W.P.s.

Common Prayer: Writ Petition - filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent in his proceedings in TIN No.33173680663/2013-14 and TIN No.33173680663/2014-15 and quash the order dated 27.02.2015 and 02.03.2015 respectively, as unlawful and invalid and further direct the respondent to allow the claim of Input Tax Credit on the purchase value of Renewable Energy Device & Spare Parts and Boilers, Boiler components & materials for Erection of Boilers being capital goods under Section 19(3) of the TNVAT Act respectively.

For Petitioner : Mr.R.D.Ganesan
For Respondent : Mr.S.Dhayalan
Government Advocate
(in both W.P.s)

COMMON ORDER

The petitioner is a manufacturer of kraft paper and a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 [hereinafter referred to as “the Act”]. For the assessment year 2013-14 and 2014-15, was duly assessed under Section 22(2) of the Act. On 07.01.2015 and 21.01.2015, notices were issued by the respondent for the respective assessment years to reverse the Input Tax Credit of Rs.14,31,750/- and Rs.44,15,340/- on the purchase value of renewable energy device & spare parts, Boilers, Boiler components and materials for Erection of Boilers claimed under Section 19(3)(a) of the Act. The respondent has not reversed ITC claim on the ground that renewable energy device & spare parts, Boilers, Boiler components and materials for Erection of Boilers are not involving in manufacturing process or packing or storing of the goods in the course of business and the goods do not fall under the category of "capital goods". The petitioner filed his objections on 04.02.2015 & 09.02.2015 and 23.02.2015 for the respective notices, along with the technical report that renewable energy device & spare parts, Boilers, Boiler components and materials for Erection of Boilers have been purchased along with the devices, which are used in running the machinery in producing kraft paper. However, the respondent has passed final orders confirming the proposals, which reads as under:

> "*From the above, it is viewed that the machinery used for producing Kraft paper shall alone fall under capital goods and not the power produced for functioning the machinery. Using the Boilers, Boiler components & materials installed in the factory premises of the dealers and said to be used to produce steam used to dry the moisture of the paper being manufactured and also generate power for running the machine have no direct of indirect involvement in the production of Kraft paper. Hence the Boilers, Boiler components, and related materials purchased by the dealers do not fall under the definition of capital goods.*
>
> *The materials purchased are only capital assets of the concern. Hence the dealers are not entitled to claim input tax credit on the purchase of renewable energy devices and related spare parts.*
>
> *The decision relied on by the dealers has no relevance to the issue under reference. The input tax credit claimed and availed by the dealers is irregular and the same is liable for giving reversal credit as per the provisions of Section 19(2) of the Act, 2006.*"

2. It is useful to refer under Section 2 (11) of the Act, wherein, the capital goods is defined, which reads as under:

> "*capital goods*"*means--*
> *(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 fittings thereof

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;”

3. As per Section 19(3) of the Act, ITC shall be allowed in the manner prescribed to every registered dealer in respect of the purchases of capital goods (for the use in the manufacture of taxable goods).

4. From perusal of the materials filed before this Court, it is seen that manufacturing of kraft paper involves series of processes. The raw materials are sent to Bunker and from Bunker to Boiler and from Boiler to Super Heated Steam and from Super Heated Steam to Turbine and after drying, the paper is made ready. In the process, Biomass Gasifier Unit, (renewable energy device) is also used for saving energy.

5. As per Section 2 (11) of the Act, “Capital goods” mean plant, machinery, equipment, apparatus, tools, appliances or electrical installation for producing, making, extracting or processing of any goods in any substance for the manufacture of final products, which includes the spare parts and accessories of the goods.

6. The definition clearly specifies that whatever be the apparatus or spare parts or accessories used in manufacturing, the process should be construed as “capital goods”.

7. In the instant cases, the diagram demonstrates that manufacturing process includes the renewable energy device & spare parts, Boilers, Boiler components and materials for Erection of Boilers as integral parts.

8. The question as to whether the renewable energy device & spare parts, Boilers, Boiler components and materials for Erection of Boilers are essential for manufacturing process or not, has to be decided.

9. From the diagram, it is seen that Biomass Gasifier Unit is an manufacturing unit. That will certainly fall under the definition of apparatus or spare parts or accessories. In such circumstances, the goods used in the manufacturing process shall be taken as "capital goods" and the benefit under Section 19(3) shall be allowed.

10. In the similar circumstances, in W.P.(MD)No.14828 of 2010 dated 24.04.2018, in the case of Thiagarajar Mills (P) Ltd., vs. Additional Commissioner (CT) (Revision petition), Ezhilagam, Chepauk, Chennai and others reported in [2018] 54 GSTR 420 (Mad), this Court has held that wind mill used for the purpose of generation of energy utilised in the manufacturing process will also fall under the category of "capital goods".

11. In these cases, the renewable energy device & spare parts, Boilers, Boiler components and materials for Erection of Boilers are integral parts or integral apparatus or accessories in the manufacturing process and therefore, it should be construed as "capital goods". The orders passed by the respondent that it does not involve direct or indirect production of kraft paper, is not acceptable. Therefore, it is reiterated that any apparatus or accessories, which is utilised in manufacturing process, shall fall under the definition of "capital goods" and therefore, the orders passed by the respondent in TIN No.33173680663/2013-14, dated 27.02.2015 and TIN No.33173680663/2014-15, dated 02.03.2015 are not sustainable.

12. Further, the contention made by the learned Government Advocate that there is a remedy of appeal available to the petitioner and without exhausting the same, the petitioner has come before this Court. Where as, the Commissioner of Commercial Taxes has also issued a clarification against the petitioner in respect of the very same issue. In such circumstances, filing of an appeal before him will be an empty formality.

13. This Court, in a judgment reported in 2005 STC 97 in the case of Pizzeria Fast Foods Restaurant (Madras) Pvt. Ltd. vs. Commissioner of Commercial Taxes, Chennai and others has held that when a clarification issued by the Commissioner would be followed by the Subordinate Officers, an appeal is filed, it will be decided only as per the clarification issued by the Commissioner as against the petitioner. In such circumstances of the case, the appeal will become inefficacious remedy. Therefore, the writ petition is also maintainable.

14. In the instant cases also, a clarification was issued by the Commissioner as against the petitioner and therefore, an appeal before him becomes empty formality and therefore, this Court can entertain the writ petitions.

15. In the result, the writ petitions are allowed. the orders passed by the respondent in TIN No.33173680663/2013-14, dated 27.02.2015 and TIN No.33173680663/2014-15, dated 02.03.2015 are set aside. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(WRITS)

/True Copy/

Sub Assistant Registrar(CS IV)

sm/tk

To

The Assistant Commissioner (CT),
Karur South Assessment Circle,
Karur.

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Common Order made in
W.P.(MD)No.3847 and 3848 of 2015
and
M.P.(MD)No.1 and 1 of 2015
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