THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NO.8401 OF 2017

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

Heard Sri M.V.J.K.Kumar, learned counsel for the petitioner and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes and, with their consent, the Writ Petition is disposed of at the stage of admission.

The relief sought for in this Writ Petition is for a mandamus to declare the action of the first respondent in rejecting the petitioner's claim for input tax credit on the purchases made from resident registered dealers on the ground that the same are to be treated as disposed of other than by way of sale though the same were destroyed by the fire accident, as arbitrary and illegal.

The proceedings, under challenge in this Writ Petition, is the assessment order dated 30.01.2017 whereby the petitioner was denied input tax credit under Section 13(1) of the Andhra Pradesh Value Added Tax Act, 2005 ("the Act" for brevity), and input tax to an extent of Rs.3,80,843/- was disallowed.

The contention urged before us by Sri M.V.J.K. Kumar, Learned Counsel for the petitioner, is that, while the fire accident took place on 23.05.2015, they subsequently claimed the benefit of input tax credit on the goods destroyed in the fire accident, on the ground that the goods were disposed of other than by way of sale. The petitioner's complaint was registered as Crime No.102 of 2015 dated 25.03.2016, and the matter is said to be pending examination by the Insurance authorities regarding the petitioner's entitlement to be paid compensation for the loss caused because of destruction of the goods in the fire accident which took place on 23.05.2015.

Section 13 of the Act relates to credit for input tax and, sub-Section (1) thereof, stipulates that, subject to the conditions if any prescribed, an input tax credit shall be allowed to the VAT dealer for the tax charged in respect of all purchases of taxable goods, made by that dealer during the tax period, if such goods are for use in the business of the VAT dealer; no input tax credit shall be allowed in respect of the tax paid on the purchase of goods specified in Schedule VI. Section 13(3)(k) of the Act stipulates that a VAT dealer shall be entitled to claim purchase of goods made by a VAT dealer which are subsequently destroyed or lost, and therefore do not have correspondent sales; and the input tax credit claimed on such purchases shall be reversed in the return for the month in which such goods are lost or destroyed. Clause (k) was inserted by Act No.4 of 2016 with effect from 12.01.2016.

Since the fire accident took place on 23.05.2015, prior to insertion of Clause (k) to Section 13(3) of the Act, Sri M.V.J.K. Kumar, Learned Counsel for the petitioner, would contend that they are entitled to claim input tax credit on the purchase value of the goods which were subsequently destroyed because of the fire accident; consequently, there are no corresponding sales; by inference, insertion of Clause (k) with effect from 12.01.2016 would mean that prior thereto input tax credit was available; and it is only after insertion of Clause (k), by Act No.4 of 2016 with effect from 12.01.2016, are they disentitled from claiming input tax credit.

Reliance is placed by Sri M.V.J.K.Kumar, learned counsel for the petitioner, on the judgment in **State of Gujarat v. S.A.Himnani Distributors Pvt. Ltd.**[1] wherein the Division Bench of the Gujarat High Court observed thus:-

> "...Under the circumstances, when it was impossible for the respondent – dealer to comply with all the conditions stipulated for input tax credit due to act of God and it was beyond the control of the respondent –dealer to fulfil the conditions for availment of the input tax credit due to the act of God – in the present case, the flood, which can be said to be valid excuse for not fulfilling the conditions stipulated for availing input tax credit on the goods destroyed in flood and therefore, interpreting the provisions for availing input tax credit, it is hereby held that the respondent herein – dealer shall be entitled to input tax credit on the goods destroyed in flood. However, subject to rider that if such dealer is compensated by the Insurance Company with respect to loss sustained i.e. with respect to the goods destroyed, the same can be given credit, meaning thereby, to that extent the respondent – dealer shall not be entitled to input tax credit, otherwise, it would be giving a double benefit to the respondent – dealer..."

Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would contend, not without justification, that the petitioner is not entitled to claim input tax credit for the compensation received by them from the Insurance Company towards the loss which occurred on the destruction of goods by fire; it is only in respect of the goods destroyed by fire, for which no compensation is paid by the Insurance Company, can the assessee claim the benefit of input tax credit; and not both; the claim for compensation, for the loss of goods because of the fire accident, is still pending consideration before the Insurance Company; and the quantum of compensation, to which they are entitled, has also not been determined till date.

[1] **2013 Law Suit (Guj) 2132**

Instead of keeping the Writ Petition pending on the file of this Court, suffice it, in terms of the judgment of the Division Bench of the Gujarat High Court in **S.A.Himnani**[1], to permit the petitioner to seek the benefit of input tax credit for this period, after the Insurance Company adjudicates and pays compensation to them for the loss suffered by them on the destruction of the goods caused because of the fire accident. On the petitioner furnishing adequate proof in this regard, the assessing authority shall examine their claim for being extended the benefit of input tax credit in accordance with law.

The Writ Petition stands disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

27th September 2018
RRB