

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.18526 to 18528 of 2011

MP.No.1 of 2011

M/s.Irbaz Shoe Company,

Rep by its Partner Mr.N.Aejaz Ahmed

...Petitioner

--Vs--

1.The Assistant Commissioner (CT)

Ayanavaram Assessment Circle

Kuralagam Annexe, Chennai-600 108

2.The Commissioner of Commercial Taxes,

Ezilagam, Chepauk

Chennai-600 005

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorarified Mandamus, calling for the records in TIN:33781002206/2006-07 quash the impugned proceedings dated 26.04.2011 and further direct the first respondent to refund the amount off the "Input Tax Credit" available to the petitioner on "zero rated sales" made as envisaged under Section 18 of the Tamil Nadu Value Addd Tax Act 2006.

For Petitioner : Mr.V.Sundareswaran

For Respondents: Mr.V.Haribabu

Additional Government Pleader

O R D E R

These writ petitions have been filed by an entity that claims to be a dealer in leather shoes and shoe components. The petitioner, in the course of its business, is said to be supplying 'shoe uppers' to various registered dealers including exporters. The exporters are stated to be placing orders upon it for supply of shoe uppers with specifications and description as per the purchase orders placed by the foreign buyers. Based on the aforesaid orders, the petitioner manufactures shoe uppers and supplies them to the exporter. The aforesaid sales are penultimate to export and are thus claimed as exempt from tax in the light of section 5(3) of the Central Sales Tax Act, 1956.

2. The petitioner, in respect of assessment years 2006-07 and 2007-08, has suffered two orders of assessment reversing

Input Tax Credit (ITC) on supplies of shoe uppers effected to exporters (assessment period 2006-07) and on a sewing machine (assessment period 2007-08). In W.P.No.18528 of 2011, the petitioner challenges Clarification dated 15.03.2007, whereunder, the Commissioner of Commercial Taxes clarifies that sales made to 100% Export Oriented undertakings are not zero rated sales and set-off of, ITC cannot be claimed in such cases.

3. Heard Mr.V.Sundareswaran, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader.

4. The petitioner in this case has claimed the benefit of zero rating in terms of Section 18 of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act'). Section 18 reads thus:

18. Zero-rating.- (1) The following shall be zero-rate sale for the purpose of this Act, and shall be eligible for input tax credit or refund of the amount of the tax paid on the purchase of goods specified in the First Schedule including capital goods, by a registered dealer in the State, subject to such restrictions and conditions as may be prescribed:-

(i) A sale as specified under sub-section (1) or (3) of Section 5 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956)

(ii) Sale of goods to any registered dealer located in Special Economic zone in the State [for the purpose of use in manufacture, trading, production, processing, assembling, packaging or for use as packing materials or packing accessories] if such registered dealer has been authorised to establish such units by the authority specified by the Central Government in this behalf; and

(iii) Sale of goods to International Organisation listed out in the Fifth Schedule.

2. The dealer who makes zero-rate sale, shall be entitled to refund of input tax paid by him on purchase of those goods, which are exported as such or consumed or used in the manufacture of other goods that are exported as specified in sub-section (1), subject to such restrictions and conditions as may be prescribed.

3. Where the dealer has not adjusted the input tax credit or has not made a claim for refund within a period of one hundred and eighty days from the date of making zero rate sale such credit shall lapse to Government.

5. In denying the petitioner the benefit of ITC as claimed by it, the revenue has not quoted any provision in the impugned

order of assessment except to baldly state that ITC was not available. Mr.V.Haribabu, learned Additional Government Pleader submits that the reversal is in terms of Section 19(12) in terms of which no ITC is available in a case where the finished goods are exempt.

6. The petitioner relies upon a decision of a learned Single Judge of this Court in the case of Emerald Stone Export Vs. The Assistant Commissioner (CT) [(2012) 52 VST 286] confirmed by the Division Bench in W.A.(Md) No.558 and 559 of 2013 dated 14.12.2018.

7. Additionally, the provisions of Section 5 (3) of the Central Sales Tax Act, 1956 (in short 'CST Act') also come to support the claim of the petitioner. Section 5 of the CST Act reads as follows:

5. When is a sale or purchase of goods said to take place in the course of import or export.-(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the Territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the Customs Frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the Territory of India only if the sale or purchase either occasions such import or is effected by transfer of documents of title to the goods before the goods have crossed the Customs Frontiers of India.

(3) Notwithstanding anything contained in subsection (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the Territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

8. The provision of Section 5(3) grant the benefit of exemption in regard to the turnover from penultimate sale of goods occasioning export out of the country. This benefit is available to the subject transaction since the undisputed facts in the present case are that the shoe uppers, customized as per the requirements of the overseas buyers, supplied by the petitioner to the exporter have been consumed in the manufacture of shoes and thereafter exported.

9. I draw support in this regard from a judgment of the Supreme Court in the case of Karnataka Vs. Azad Coach Builders

Pvt. Ltd. and Another [(2010) 36 VST 1] and the relevant portion of the judgment is extracted below:

24. The phrase 'sale in the course of export' comprises in itself three essentials: (i) that there must be a sale: (ii) that goods must actually be exported and (iii) that the sale must be a part and parcel of the export. The word 'occasion' is used as a verb and means 'to cause' or 'to be the immediate cause of'. Therefore, the words 'occasioning the export' mean the factors, which were immediate course of export. The words 'to comply with the agreement or order' mean all transactions which are inextricably linked with the agreement or order occasioning that export. The expression 'in relation to' are words of comprehensiveness, which might both have a direct significance as well as an indirect significance, depending on the context in which it is used and they are not words of restrictive content and ought not be so construed.

25. Therefore, the test to be applied is, whether there is an inseverable link between the local sale or purchase on export and if it is clear that the local sale or purchase between the parties is inextricably linked with the export of the goods, then a claim under Section 5(3) for exemption from State Sales Tax is justified, in which case, the same goods theory has no application.

The facts of this case clearly reveal that the transaction between the assessee and the exporter is inextricably connected with the export of the goods to Sri Lanka. The communication between the foreign buyer and the exporter reveals that the foreign buyer wanted the bus bodies to be manufactured by the assessee under the specifications stipulated by the foreign buyer. The bus bodies constructed and manufactured by the assessee could not be of any use in the local market, but were specifically manufactured to suit the specifications and requirements of the foreign buyer. In the Purchase Order placed on the assessee by the exporter, it is specifically indicated that the bus bodies have to be manufactured in accordance with the specifications provided by the foreign buyer, failure to do so might result in cancellation of the export order. The assessee in this case has succeeded in showing that the sale of bus bodies have occasioned the export of goods. When the transaction between the assessee and the exporter and the transaction between the exporter and foreign buyer are inextricably connected with each other, in our view, the 'same

goods' theory has no application.

We may also indicate that the burden is entirely on the assessee to establish the link in transactions relating to sale or purchase of goods and to establish that the penultimate sale is inextricably connected with the export of goods by the exporter to the foreign buyer, which in this case the assessee has succeeded in establishing.

10. In conclusion on a combined reading of Section 5(3) of the CST Act and 18(1)(1) of the TNVAT Act, the petitioner is entitled to the benefit of ITC in respect of shoe uppers supplied by it to the 100% EOU for export. The clarification of the Commissioner to the contrary is set aside. Writ Petition Nos.18527 & 18528 of 2011 are allowed.

11. Learned counsel for the petitioner seeks permission of this Court to withdraw Writ Petition No.18528 of 2011 and has also made an endorsement in this regard. Accordingly, the Writ Petition is dismissed as withdrawn. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner (CT)
Ayanavaram Assessment Circle
Kuralagam Annexe, Chennai-600 108

2.The Commissioner of Commercial Taxes,
Ezilagam, Chepauk
Chennai-600 005

+1 cc to Spl Government Pleader Sr.No. 88562

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A.SK(10/01/2020)