IN HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2019

DELIVERED ON : 13.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.23423 of 2012 and 3455 of 2017
and
M.P.No.1 of 2012 and WMP.No.3428 of 2017

W.P.No.23423 of 2012 and M.P.No.1 of 2012
M/s.RSM Autokast Ltd.,
rep.by its Director K.Ilango,
603, C-Block, Pioneer Complex,
1075, Avinashi Road, Coimbatore-18.
.. Petitioner

vs

The Commercial Tax Officer,
Avinashi Road Circle,
Commercial Taxes Building,
Coimbatore - 18. .. Respondent

Prayer:Writ Petition filed under Article 226 of Constitution of India, to issue a writ of certiorari, calling for the records of the respondent in his proceedings in TIN 33281781197/2011-12 dated 19.07.2012 and quash the same.

W.P.No.3455 of 2017 and W.M.P.No.3427 of 2017

M/s.Rangammal Steels and Malleable,
Rep.by its Partner K.Ilango,
603, C- Block, Pioneer Complex,
1075, Avinashi Road, Coimbatore-18.
.. Petitioner

vs

The Assistant Commissioner (CT),
Avinashi Road Circle,
Commercial Taxes Building,
Coimbatore - 18. .. Respondent

Prayer:Writ Petition filed under Article 226 of Constitution of India, to issue a writ of certiorari, calling for the records of the respondent in his proceedings in TIN 33731781192/2011-12 dated 11.01.2017 and quash the same.

For Petitioner : Mr.S.Ramanathan
(In both W.Ps.)

For Respondents : Mr.V.Haribabu
(In both W.Ps.)

C O M M O N O R D E R

Short point that arises for consideration in the present writ petition is whether the respondent is justified in asking the petitioner to reverse the proportionate input tax credit (ITC) availed on windmills/wind turbines which were used for generating electricity for captive consumption in the manufacture of goods liable to tax.

2. The petitioner had purchased wind turbines from a supplier and had them installed in the wind energy park. The petitioner availed 50% of the input tax credit on the VAT paid by the supplier during June 2011 and the balance 50% during April 2012. Total input tax credit of Rs.19,79,194/- availed by the petitioner was sought to be dis-allowed by the respondent. In this connection, a show cause notice dated 21.3.2016 was issued to the petitioner, after which the assessment was completed for the assessment year 2011-12 and a part of the input tax credit availed on the wind turbines was adjusted towards the tax liability.

3. The petitioner replied to the above show cause notice vide its reply dated 09.01.2017 stating that the wind electric turbine/ generator were a capital goods used in the manufacture of taxable goods namely auto parts and that the electricity generated by the petitioner was actively consumed for such manufacturing purpose.

4. It was contended by the petitioner that question of reversal of input tax credit would arise only where electricity generated was sold to a 3rd party and not where electricity generated was captively consumed in the manufacture of goods which are liable to value Added Tax.

5. On 3.1.2017 another notice was issued calling upon the petitioner to reverse the aforesaid credit of Rs.19,79,194/- under Section 19(6) and to impose penalty under Section 27(4) of the Tamil Nadu VAT Act, 2006. Petitioner was therefore called upon to reply to the above notice which was duly complied with.

6. By the impugned order, the respondent has confirmed that the petitioner was liable to reverse the aforesaid input tax credit under Section 19 (6) of the TNVAT Act, 2006 with penalty under Section 27 (4) of the aforesaid Act.

7. Heard the learned counsel for the petitioner Mr.S Ramanathan and Mr Hari Babu, learned AGP (Taxes). The definition of "capital good" in Section 2(11) of the TNVAT Act, 2006 is wide. It includes electrical installations for producing, making, extracting ore processing of any goods or for extracting ore for bringing about any change in any substance in the manufacture of final product. It only excludes civil structures and such other goods as may be notified by the government. Therefore, wind turbines on which input tax credit was availed by the petitioner was "capital goods" within the meaning of Section 2 (11) of the TNVAT Act, 2006.

8. Only if such capital goods was exclusively used in the manufacture of exempted goods under Section 15 of the Tamil Nadu VAT Act, 2006, the question of reserving credit under Section 19 (6) of the Act would arise.

9. It is not the case of the respondent that the electricity generated was sold by the petitioner. Therefore, invocation of Section 27 (2) read with section 19 (6) of the Tamil Nadu VAT Act, 2006 to deny credit was without any justifiable legal basis. In my view since proportionate quantum of electricity generated was used by the petitioner for the manufacturing purpose, there is no justification denying credit availed on tax paid on such wind turbines.

10. The assessment orders passed by the respondent also indicates that there were no exempted turnovers during the aforesaid assessment years. Further, Section 15 of the Act deals only with sale of goods specified in the 4th schedule or the goods exempted by notification by the government by any dealer. In this case, the electricity generated has not been sold but has been consumed captively.

11. There are no restriction under the rules which are attracted to the facts and circumstances of the present case to deny the credit to the petitioner. The issue is also now covered by following two decisions:-

i) Brahmaputra Metallics Limited vs. State of Jharkhand through the Secretary cum-Commissioner, Commercial Taxes Department, Government of Jharkhand and Others, 2019 SCC Online Jhar 816 : (2019) 67 GSTR 277

ii) Sri Pathi Paper and Boards (P)Ltd., Coimbatore 641 045 vs. The State of Tamilnadu Rep.by the Secretary, Commissioner Taxes and Registration Department, Fort St.George, Chennai -9 and other in W.P.No.4761 dated 08.08.2019

12. In the light of the above discussion, the question as to whether the petitioner was entitled to avail credit on tax paid on wind turbine is to be answered in favour of the petitioner. There is no case for invoking proviso to Section 19 (6) of the Tamil Nadu VAT Act, 2006. Consequently, imposition of penalty is also liable to be set aside.

13.Therefore, the impugned order passed by the respondent is set aside and accordingly both the writ petitions are allowed with consequential relief to the petitioner. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kkd
To
1. The Commercial Tax Officer,
Avinash Road Circle,
Commercial Taxes Building,
Coimbatore - 18.

2.The Assistant Commissioner (CT),
Avinash Road Circle,
Commercial Taxes Building,
Coimbatore - 18.

+2cc to Mr.S.Ramanathan, Advocate sr.103836
+1cc to Special Government Pleader sr.104979

W.P.Nos.23423 of 2012 and 3455 of 2017
and M.P.No.1 of 2012 &
WMP.No.3428 of 2017

bp(co)
nr 20/02/2020