IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.11.2019
CORAM
THE HONOURABLE DR. JUSTICE ANITA SUMANTH
W.P.No.38857 to 38863 of 2015

M/s.Flow Link Systems (P) Ltd.
189/1A-C, Uthupalayam,
Arasur, Avanashi Road,
Coimbatore-641407 ...Petitioner in all Wps.

--Vs--

The Commercial Tax officer
Special Circle-I, Tirupur ... Respondent in all Wps.

****

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 of the respondent herein in TIN No.33472461887/2013-14 and quash the order dated 03.11.2015 passed therein in so far as it reverses the Input Tax Credit claimed by the petitioner to the extent of Rs.2,18,440/-, 2,48,261/-, 98,191/-, 1,73,544/-, 3,22,892/-, 2,30,928/-, 1,20,935/- and direct the respondent to refund the said sum of Rs.2,18,440/-, 2,48,261/- 98,191/-, 1,73,544/-, 3,22,892/-, 2,30,928/-, 1,20,935/- respectively to the petitioner herein.

For Petitioner in all : Mr.Hema Murali Krishnan
For Respondents in all : Mr.G.Dhana Madhri
Government Advocate

ORDER

Seven writ petitions have been filed challenging orders rejecting a portion of the refund sought pursuant to filing of Form W for the months of July 2013, August 2013, November 2013 to March 2014.

2. The petitioner is a manufacturer of industrial goods and had effected exports of industrial valves during the period in question. Form W was filed claiming refund of Input Tax Credit (ITC) for the months as stipulated aforesaid. In the course of considering/sanctioning the refund claims, the Assessing Officer has passed impugned orders and three of the modifications as effected therein, are in challenge before me.

3. The first relates to a restriction of ITC in relation to capital goods. It appears that there was some ambiguity regarding the allowance of a claim of ITC in this regard that stood settled on 21.06.2018 by Circular issued by the Commissioner of Commercial Taxes wherein earlier Circulars, in relation to export refunds of ITC and capital goods, have been superseded pursuant to a suggestion made by the Accountant General in Letter Audit Cell dated 05.06.2018. After considering the suggestion of the AG, the Commissioner clarifies as follows:

> (4) The relevant provisions with regard to capital goods and input tax are defined under sections 2(11), 2 (23) and 2(24) of TNVAT Act 2006 and the issue of refund of input tax credit on capital goods with respect to zero rated sales are dealt under Section 2 (44), 18(1), 18(2) and 18(3) of TNVAT Act 2006; the provisions have been perused and the plain reading of the relevant sections enable refund of the claim of input tax credit on capital goods with respect to zero rate sales including exports.
>
> (5) Therefore, the para 14 of the circular instructions issued vide reference first cited is modified to the extent that the claim of input tax credit on capital goods is also eligible for refund with respect to zero rate sales and subject to eligibility and ineligibility conditions prescribed for the claim and admissibility of input tax credit as contained in the extant provisions of section 18 and 19 of the TNVAT Act, 2006 read with rule 10 and 11 of TNVAT Rules, 2007.

4. In the light of the aforesaid, ITC claimed on capital goods is liable to be sanctioned and this ground is allowed.

5. ITC on purchases from three dealers has been reversed on the ground that their registration certificates have been cancelled. No notice has been issued prior to effecting the aforesaid disallowance which is, in my considered view, a gross violation of the principles of natural justice.

6. This issue is thus set aside for supply of the details relied upon by the officer in regard to the third party dealers. Let all documents relied upon be supplied to the petitioner within two (2) weeks from date of receipt of a copy of this order. Thereafter the matter shall be fixed for hearing and the claim of refund of ITC shall be disposed after hearing the petitioner and considering any material that may be filed by it, within a period of four weeks from conclusion of personal hearing. This ground is disposed as aforesaid.

7. The third issue relates to reversal of ITC on wastage in terms of Section 19(9) of the Act on the ground that the same constitutes invisible losses. A learned Single Judge of this Court in Interfit Techno Products Ltd., Vs. Principal Secretary / Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another [(2015) 81 VST 389 (Mad)] has set aside an identical issue to the file of the Assessing Officer to be re-done after a proper opportunity is extended to the petitioner. The officer has also, therein, been directed to engage in a proper and systematic exercise of qualifying the percentage of loss prior to effecting any disallowance on this account. In the light of the above decision as well as concurrence expressed by both learned counsel in this regard, this issue will also be redone within the timelines as set out in paragraph 6 above. This Ground is allowed.

8. The writ petitions are disposed in the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

ska

To

The Commercial Tax officer
Special Circle-I, Tirupur.

+1cc to M/s.Hema Muralikrishnan, Advocate, SR.No.97037.
+1cc to Government Pleader, SR.No.97794.

W.P.No.38857 to 38863 of 2015

EV(CO)
CSR: 04.03.2020