IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.4874, 4875 of 2015
8982 & 8983 of 2013

United Foundaries Limited
Represented by its Director
V.Vasudevan ..Petitioner in W.P.Nos.4874 & 4875 of 2015

M/s Florind Uppers Pvt Limited,
Rep. by its Director
Mr.K.Shahid Mansoor ..Petitioner in W.P.Nos.8982 & 8983 of 2013

--Vs--

The Assistant Commissioner (CT)
Ranipet (SIPCOT)
Ranipet ..Respondent in W.P.Nos.4874 & 4875 of 2015

The Assistant Commissioner (CT) (FAC)
Nungambakkam Assessment Circle,
No.88, Mayour Ramanathan Road,
Chetpet, Chennai-600031.
..Respondent in W.P.Nos.8982 & 8983 of 2013

Prayer in W.P.Nos.4874, 4875 of 2015 : Writ Petitions 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 Certiorari, calling for the records of the respondent herein in his TIN:33784360152/2007-08 & 2008-09 dated 23.01.2015 and quash the same in so far as it relates to reversal of ITC on the sales turnover relating to 100% EOU.

Prayer in W.P.Nos.8982 & 8983 of 2013: 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 in TIN:33170461524/2009-10 & 2010-11 and quash the impugned order dated 04.03.2013 in so far as it relates to "reversal of input tax credit"on the sales of goods made to 100% Export Oriented Unit (EOU) and further direct the respondent to refund the amount of "input tax" which, otherwise had accrued to the petitioner under Section 19(18) of the TNVAT Act, 2006 read with rule 10(10)(b) of the TNVAT Rules, 2007, since in any event of the matter the petitioner had already filed the claim of ïnput tax credit"in monthly returns in form I as stipulated under the TNVAT Act, 2006.

For Petitioner : Mr.N.Inbarajan in W.P.Nos.4874 & 4875 of 2015
Mr.V.Sundareswaran in W.P.Nos.8982 & 8983 of 2013

For Respondents : Ms.G.Dhana Madhri, GA
Government Advocate in all WPs

ORDER

A common order is passed in respect of these four writ petitions, though dealing with two separate assessees, since the legal issues that arise are one and the same.

2. Heard Mr.N.Inbarajan, learned counsel for petitioner in W.P.Nos.4874 & 4875 of 2015, Mr.V.Sundareswaran, learned counsel for petitioner in W.P.Nos.8982 & 8983 of 2013 and Ms.G.Dhanamadhri, Government Advocate for the respondent in all four writ petitions.

3. Both petitioners are dealers registered under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') and manufacturers of shoe uppers. They have, consequent upon orders being placed upon them, effected supplies of the shoe uppers to 100% Export Oriented Undertakings (EOU), located in the Madras Export Processing Zone.

4. The only issue that is agitated and argued before me is the reversal of input tax credit under Section 19(12) of the Act in relation to turnover from sales effected to an EOU in assessments for the periods 2007-08 and 2008-09 (W.P.Nos.4874 & 4875 of 2015) & 2009-10 & 2010-11 (W.P.Nos.8982 & 8983 of 2013),

5. Both petitioners rely upon the provisions of Section 18 of the Act that deals with a zero-rated sale. The section reads as under:

> 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 material 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 Organizations 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 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] shall lapse to Government.

6. A reading of the provision makes it clear that a sale effected to a 100% EOU would fall within the sweep of Section 18, that is, a zero-rated sale. The question of reversal of Input Tax Credit under Section 19(12) would not arise in such a case since Section 19(12) deals with the reversal of input tax credit in the sale of exempt goods only. A zero-rated sale is not liable to be equated with a sale that is exempt from taxation.

7. This issue has, in fact, been decided in favour of the assessee by a learned Single Judge of this Court in Emerald Stone Export Vs. Assistant Commissioner (CT), FAC, Pudukkottai [(2012) 52 VST 286], confirmed by a Division Bench in Assistant Commissioner (CT) Vs. Emerald Stone Expert (Order dated 14.12.2018 in W.A.(MD) Nos.558 & 559 of 2013).

8. In the light of the aforesaid, the impugned order of assessments, in so far as they relate to this issue, are set aside and the writ petitions allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Ranipet (SIPCOT)
Ranipet

The Assistant Commissioner (CT) (FAC)
Nungambakkam Assessment Circle,
No.88, Mayour Ramanathan Road,
Chetpet, Chennai-600031

+1 cc to M/s.N.Inbarajan, Advocate Sr.No. 83455
+1 cc to M/s.V.Sundareswaran,Advocate Sr.No. 83561
+1 cc to The Special Government Pleader Sr.No.84149 & 84150

AKM/03.01.2020/4P- 6C /

W.P.No.4874, 4875 of 2015
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