IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.2174 of 2014
and
M.P.Nos.1 & 2 of 2014

M/s.Ran India Steels (P) Ltd.,
Rep. by its Managing Director - R.Radha,
Ayyappa Tower 1st Floor,
C.H.B.Colony, Velur Road,
Tiruchengode - 637 211,
Namakkal District. ... Petitioner

vs

The Commercial Tax Officer (FAC),
Tiruchengode (Town) Circle,
Tiruchengode. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the impugned proceedings of the Respondent in TIN 33473181821/2012-13 dated 16.12.2013 and to quash the same as illegal and contrary to the principles of natural justice and against the provisions of the TNVAT Act, 2006.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.V.Hariharan
Additional Government Pleader

O R D E R

The present Writ Petition has been filed against the impugned order dated 16.12.2013 passed by the respondent Commercial Tax Officer (FAC), Tiruchengode (Town) Circle, Tiruchengode bearing reference No. TIN 33473181821/2012-13.

2.By the impugned order, the respondent Commercial Tax Officer (FAC) has confirmed a demand of Rs.54,51,731/- as the disputed tax on account of the "invisible loss" on the credit availed by the writ petitioner on inputs in terms of Section 19(9)(iii) of the TNVAT Act, 2006.

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3.The impugned order came to be passed in the background of the Show Cause Notice issued to the writ petitioner on 25.10.2013, calling the writ petitioner to show cause as to why amount should not be demanded. Though the hearing was fixed on 05.11.2013, the writ petitioner did not appear before the respondent. Thereafter, the writ petitioner vide letter dated 13.11.2013 gave its submission pursuant to which the impugned order dated 16.12.2013 came to be passed.

4.The learned counsel for the petitioner submits that the officer concerned inspected the factory of the petitioner on 27.09.2012 and arrived at an "invisible loss" and has demanded proportionate tax on the input loss during the month of process. Inspection was carried out by the officer concerned.

5.The learned counsel for the petitioner further submits that there is no machinery prescribed under Section 19 of the TNVAT Act, 2006 for reversal of the input tax credit on "invisible loss" of the goods used in the manufacture of final product. He further submits that once the credit has been validly availed in terms of the Section 19(2) of the TNVAT Act, there are other provisions under the Act or Rules made thereunder to recover such credit.

6.He further submits that there has been a manifest violation the principles of natural justice in as much as the order has been passed without petitioner, particularly to be heard.

7.The defending the order, the learned Additional Government Pleader (T) for the respondent submits that the credit availed is provisional in terms of Section 19(16) of the TNVAT Act, 2006 and therefore credit can be recovered and it is for the specific purpose, a circular has been issued. He further submits that notice dated 25.10.2013 called upon the petitioner to appear on 05.11.2013. The petitioner filed its reply only on 13.11.2013 and it is only thereafter the impugned order came to be passed. He further submits that even if no hearing was given, the order passed by the respondent officer cannot be faulted as it is well reasoned and in accordance with law.

8.I have considered the arguments advanced by the learned counsel for the petitioner and the respondent.

9.It is evident that the Show Cause Notice was issued to the petitioner pursuant to the circular dated 20.10.2011 though the circular has not been referred in the Show Cause Notice. In Interfit Techno Products Ltd. Vs. Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam, Chennai and Another, (2015) 81 VST 389 (Mad), a learned Single Judge of this Court has already held that there is no necessity to

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quash the circular. The facts remain that the petitioner was not heard before the impugned order was passed, even though the petitioner specifically requested for adjournment vide letter dated 25.10.2013 and filed its objections on 13.11.2013. The operative portion of the impugned order reads as under:-

> In fine the objection raised against the proposal for reversal of ITC on stock transfer is found acceptable and the objections raised against the reversal of ITC on capital goods availed in excess of 50% and the ITC proposed for loss of inputs in the process of manufacture are not at all acceptable for the reasons explained above.
> In the objection letter, at the outset the dealers have expressed their thanks for the opportunity granted to file their objections against the notice issued. However they have chosen to ignore the opportunity granted for personal hearing and did not appear for personal hearing on the appointed dated 05.11.2013. No letter was received in this regard for failure to appear for personal hearing and nor did they request for personal hearing on some other convenient date. But in their objection letter now filed, the dealers have requested to provide an opportunity for personal hearing, for the reasons best known to them. Obviously these are the tactics adopted to delay the assessment proceedings to the extent possible. Since the dealers have failed to avail the opportunity already given and no one appeared for personal hearing their request for personal hearing once again cannot be complied with.

10. Since no opportunity has been given to the petitioner to make its submissions, the impugned order is liable to be quashed and the case deserves to be remitted back to the respondent for passing a fresh order within a period of three months from the date of receipt of a copy of this order. In W.P.No.3172 of 2014, I have made certain observations which are reproduced below:-

> 5.In my view, the expression "inputs destroyed at some intermediary stage of manufacture" in sub Clause (iii) of Section 19(9)(iii) of TNVAT Act, 2006 will not take within its fold those inputs "consumed" in the manufacture of final product. Only when inputs are “destroyed at some intermediary stage of manufacture”,

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reversal of input tax credit is warranted. They would be instance of inputs which are withdrawn at an intermediary stage of manufacture and are incapable of being used further and are sold as scrap/waste or physically destroyed by an assessee having no residual value. Such inputs alone can be construed as "inputs destroyed at some intermediary stage of manufacture". There is no scope for reversal of input tax credit on inputs which get consumed during the course of manufacture as "invisible loss".

11.The respondent may keep them in mind while passing orders in the denovo proceedings. The Writ Petition stands disposed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen

To

1.The Commercial Tax Officer(FAC)
Thiruchengode(Town) Circle,
Thiruchengode.

+1cc to Mrs.R.Hemalatha, Advocate SR.101419

W.P.No.2174 of 2014
and
M.P.Nos.1 & 2 of 2014

SR(CO)
CB(12/02/2020)

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