BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2019

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)Nos.13423 and 13424 of 2012

M/s.DCW Limited,
Rep. by its
Deputy General Manager (Legal & Indirect Taxation),
M.Thyagamoorthy,
Sahupuram,Tiruchendur,
Tuticorin District. ... Petitioner in both W.Ps'

Vs.

1.The Additional Commissioner (Revision Petition),
Office of the Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai.

2.The Joint Commissioner of Commercial Taxes,
Tirunelveli Division, Tirunelveli.

3.The Commercial Tax Officer,
Tiruchendur Assessment Circle,
Tiruchendur. ... Respondents in both W.Ps'

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records of the first respondent culminating in his impugned proceedings in Revision Petitions J1/RP/120/2009 and J1/RP/119/2009 dated 26.12.2011 confirming the orders passed by the second and third respondents dated 11.03.2009 and 03.07.2008 respectively and 11.03.2009 and 16.09.2008 respectively and direct the third respondent to allow the Input Tax Credit already availed by the petitioner which was rejected by the respondents.

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

For Respondents : Mr.S.Angappan,
(In both W.Ps') Government Advocate.

COMMON ORDER

Both Writ Petitions relate to the same petitioner and give rise to the same issue and are hence, disposed by means of this common order.

2.The petitioner is a manufacturer of caustic soda, PVC resins and chemicals. It had claimed Input Tax Credit (in short 'ITC') with respect to certain goods that, according to it, constituted capital goods, for the purposes of assessment under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (In short 'Act').

3.The Assessing Authority was of the view that the claim of ITC was incorrect and had issued a notice proposing the reversal of ITC claimed in respect of the assessments for the period 2006-07 and 2007-08 in terms of Sections 19(2), 19(7)(a) and 19(8) of the Act r/w Section 2(11) of the Act. The petitioner, in reply, reiterated its claim rejecting which orders of assessment dated 03.07.2008 and 16.09.2008 were passed confirming the proposals for reversal of ITC.

4.The petitioner challenged the assessments, preferring Revision Petitions before the Joint Commissioner of Commercial Taxes in terms of Section 54 of the Act. The Revision Petitions were rejected on the ground that the goods in respect of which ITC had been claimed did not satisfy the description under Section 2(11) of the Act and also for the reason that the purpose for which the goods were utilised could not be ascertained from the records produced by the petitioner. Further Revision petitions were filed before the Additional Commissioner in terms of Section 57 of the Act that were dismissed on 03.01.2012 and 26.12.2011 respectively. It is as against the aforesaid orders that the present Writ Petitions have been filed.

5.Heard Mr.S.Karunakar, learned counsel for the petitioner and Mr.S.Angappan, learned Government Advocate for the respondent.

6.According to Mr.S.Karunakar, learned counsel for the petitioner, the goods in respect of which ITC was claimed are capital goods in terms of Section 2(11) of the Act as well under the provisions of Rule 57Q of the Modvat Rules.

7.Mr.S.Angappan, learned Government Advocate for the respondents draws attention to the description of the goods upon which ITC was claimed pointing out that the goods included not only equipment, but also office items such as stationery, raincoat, soap solution, lock, refrigerator, calculator, water heater, ladder, torch light, wash basin and various other items that do not fall within the ambit of 'capital goods' at all. The impugned orders denying the benefit of ITC have thus, according to him, been rightly passed.

8.Two issues arise in the present matters. The first concerns the classification of the goods itself. The claim of the petitioner is very wide and encompasses all equipment in its premises right from manufacturing equipment to office supplies. This is obviously impermissible. What would constitute 'capital goods' has to be strictly understood as falling within the contours of Section 2(11) of the Act extracted below:-

> '2.Definitions.-
>
> ....
>
> (11) "capital goods" means.-
>
> (a) plant, machinery, equipment, apparatus, tools, appliances or electrical installation for producing, making, extracting or processing of any goods or for extracting or for bringing about any change in any substance for the manufacture of final products;
>
> (b) pollution control, quality control, laboratory and cold storage equipments;
>
> (c) components, spare parts and accessories of the goods specified in (a) and (b) above;
>
> (d) moulds, dies, jigs and fixtures;
>
> (e) refractors and refractory materials;
>
> (f) storage tanks; and
>
> (g) tubes, pipes and fittings thereof; used in the State for the purpose of manufacture, processing, packing or storing of goods in the course of business excluding civil structures and such goods as may be notified by the Government.'

9.A reasoned exercise of determining the categorisation/ classification of the goods is necessary in order to ensure that the claim relates to 'capital goods' only.

10.As regards the legality of the claim, the provisions of Section 19(3)(a) of the Act entitle an assessee to claim ITC on capital goods used 'for the manufacture of taxable goods'.

11.In the present case, there is no dispute on the position that the goods manufactured by the petitioner are liable to tax. Section 19(6) of the Act provides that no ITC shall be allowed on purchase of capital goods, used exclusively in the manufacture of goods exempt under Section 15 of the Act. This embargo will not be applicable to the present case, since it is not disputed that the petitioner manufactures taxable goods. The entitlement of the petitioner to claim ITC of capital goods thus cannot be questioned, per se and I am of the view that the Assessing Authority has, in the impugned orders, completely lost sight of the provisions of Section 19(3) of the Act which provide for the claim of ITC on 'capital goods'.

12.The Assessing Authority has however, relied on the provisions of Section 19(7)(a) of the Act to deny the petitioners' claim. The provision is extracted below:-

'19(7) No registered dealer shall be entitled to input tax credit in respect of-

(a) goods purchased and accounted for in business but utilised for the purpose of providing facility to the proprietor or partner or director including employees and in any residential accommodation;

……'

13.According to him, the goods in question had been purchased and accounted for in business, but were being utilised for the purpose of providing facilities to the directors of the petitioner company. The officer cannot really be faulted for coming to this conclusion in the light of the range of goods in respect of which the claim has been made, extracted below:-

'1.Current transformer
2.Submersible pump
3.Welding gloves
4.Painting brush
5.Spanner
6.Switch
7.Connectors
8.Thermoplastic junction box
9.Leather gloves
10.Asbestos packing
11.Rubber sheet
12.Steel wire
13.Fiber cloth
14.Hacksaw blade
15.Measuring tape
16.Cell rack
17.Cotton waste
18.MS Plate
19.Tape
20.MS Pipe clamp
21.PVC insulated copper
22.Emery sheet
23.Shaft assembly
24.Motor checker
25.Ice
26.AC Coil cleaner
27.Chisels
28.MS Bolt nut
29.Boiling flask
30.Waste coupling
31.Thermocol sheet
32.Pin top
33.Hammer
34.Rubber matting
35.Motor
36.PVC Pipe
37.Screw driver

38.MS pipe
39.Anabond
40.Bannian waste
41.Bannian tape gloves
42.Adopter
43.Power contactor
44.Ice bar
45.Carbon seal ring
46.Bricks
47.Bitumen
48.Sand
49.Paints'

14.Placing reliance on the provisions of the Central Excise Act, 1944, the petitioner has also extended its claim to include office items such as telephone cable, computer mouse, diary, dettol, scissors, calculator, printer and light fittings such as tube light fittings, lamps, bulb.

15.Though a few of the items listed above might be construed as 'capital goods' in line with the definition thereof under Section 2 (11) of the Act, evidently the bulk of the items described would not, by any stretch of the imagination, satisfy the definition. I consciously refrain from commenting on which goods might/would satisfy the definition, since this is a fact finding exercise that should be undertaken by the Assessing Officer. I leave this exercise to be done by the Assessing Officer, after receiving inputs from the petitioner in this regard. The impugned orders are set aside for this limited purpose only.

16.The assessments shall be redone as above within a period of eight weeks from date of receipt of a copy of this order, after issuing notice to the assessee and consideration of all/any material relied upon by the assessee before the officer. These Writ Petitions are allowed to the extent indicated above. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Additional Commissioner (Revision Petition),
Office of the Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai.

2.The Joint Commissioner of Commercial Taxes,
Tirunelveli Division, Tirunelveli.

3.The Commercial Tax Officer,
Tiruchendur Assessment Circle,
Tiruchendur.

+1 CC to M/s.SPL GP (SR-74991[F] dated 12/07/2019)

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