BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **08.08.2019**
CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P.(MD)No.4761 of 2011

Tvl.Sri Pathi Paper and Boards (P) Ltd.,
Coimbatore - 641 045. ... Petitioner

/Vs./

1.The State of Tamilnadu, Represented by the Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai - 9.

2.The Commercial Tax Officer - 3,
Sivakasi. ... Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the 2nd respondent in TIN No.33166001830/10-11 and quash the order dated 22.03.2011 passed therein.

For Petitioner : Mr.A.Chandrasekaran
For Respondents : Mrs.J.Padmavathy Devi
Special Government Pleader

ORDER

The petitioner is a manufacturer of Paper and Board. The petitioner requires, for its manufacturing process, generation of steam for which purpose, it purchased a co-generation power plant that apart from generation of steam, also incidentally generated electricity that the petitioner used in its manufacturing process, captively. The plant is a capital asset in terms of Section 2(11) of the Tamil Nadu Value Added Tax, 2006 [in short 'Act']. The petitioner thus claimed the set-off of Input Tax paid on the purchase of co-generation plant against its taxable turnover. The assessing officer was, however of the view that such set-off should be denied since the plant had also generated electricity which was a product exempt from the levy of Value Added Tax (in short 'VAT').

2. Though, admittedly, the plant had assisted both in the generation of steam as well as electricity, the assessing authority does not reverse Input Tax Credit [in short 'ITC'] proportionately, but has infact reversed the ITC claimed, in full, placing reliance on the provisions of Section 19(11) of the Act.

3. I am however, of the considered view that the officer has erred insofar as the generation of electricity by the co-generation plant cannot be the reason for denial of claim of the petitioner. The generation of electricity is not the primary purpose of the equipment, but is only incidental. Moreover, the purpose for which the assessee has purchased the equipment is relevant and in this case is, admittedly, only for the generation of steam. The requirement of steam in the manufacturing process has been noted and accepted by the assessing officer in the impugned order of assessment. Thus, utility of the asset insofar as it relates to the generation of steam is not in question. These factors have been lost sight of by the officer in denying the claim.

4. The petitioner has stated that the co-generation plant is used primarily for the generation of steam. However, since the steam generation in the plant will be of very high pressure and temperature which cannot be used directly in/for the production process, the excess pressure and temperature would have to be brought down to a certain level post which the steam can be channelized for use in the production process. A Turbine Generator had been installed in the factory for this purpose and the steam was being routed through the generator for reduction of the pressure. It was in the course of the aforesaid process that electricity was being generated as a by-product. While the steam was thereafter utilised in the production process for recycling of paper and further manufacturing activity, the power generated through the turbine generator was captively consumed inside the factory in the manufacturing process. The manufacturing of 'electrical energy' in the present case in the above circumstances, in my considered view, does not stand in the way of acceptance of the petitioners' claim for ITC.

5. Admittedly, the turnover of the petitioner does not include any turnover attributable to the sale of electricity. In the aforesaid scenario, the reversal on ITC on account of generation of electricity, though incidental and consumed capatively, is not proper and is set aside.

6.This Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To
1.The Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai - 9.

2.The Commercial Tax Officer – 3,
Sivakasi.

+1 CC to M/s.A.CHANDRASEKARAN, Advocate (SR-80916[F] dated 09/08/2019)

Order made in
W.P.(MD)No.4761 of 2011
Dated:
08.08.2019

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JM/17.09.2019/3P/4C