BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)Nos.5650 to 5653 of 2014
and
W.M.P.(MD)Nos.1, 1, 1, 1, 2, 2, 2 and 2 of 2014

M/s.Suryabalaji Steels Pvt. Ltd.,
rep.by its Authorized Signatory-
M.Ravichandran,
No.7-A, SIPCOT Industrial Estate,
Pudukottai-622 002.
Pudukottai District. ... Petitioner in all petitions

Vs.

1.The Principal Secretary / Commissioner of
Commercial Taxes, Ezhilagam,
Chepauk, Chennai-600 005.

2.The Commercial Tax Officer (FAC),
Pudukottai-I, Pudukottai,
Pudukottai District. ... Respondents in all petitions

COMMON RAYER:Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorari, to call for the records on the file of the second respondent in his impugned proceedings made in TIN 33064104953/2010-11, TIN 33064104953/2012-13, TIN 33064104953/2011-12 and TIN 33064104953/2013-14, respectively dated 19.03.2014 quash the same as illegal and arbitrary.

For Petitioner : Ms.Hemalatha
For Respondents : Mr.S.Angappan
Government Advocate
(in all petitions)

COMMON ORDER

These Writ Petitioners seek writ of certiorari challenging assessments made under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') in respect of the periods 2010-11, 2011-12, 2012-13 and 2013-14 dated 19.03.2014.

2. Heard Ms.Hemalatha, learned counsel for the petitioner and Mr.S.Angappan, learned Government Advocate, for the respondents.

3. Both learned counsel concur on the position that the issue in these writ petitions, being reversal of input tax credit for burning loss / invisible loss, has been decided by this Court in the case of Interfit Techno Products Ltd., Vs. Principal Secretary / Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another [(2015) 81 VST 389 (Mad)].

4. The learned Single Judge has issued a set of directions in conclusion, that are extracted below:-

"In the result,

(1) the challenge to the impugned circular is held to be unnecessary since the circular is a non statutory circular and is in the nature of guideline and the prayer for quashing the circular is rejected.

(2) Section 18 of the TNVAT Act is not an independent or a separate stand alone provision under the provisions of TNVAT Act but subject to other provisions of the Act including Section 19 of the VAT Act.

(3) For the reasons assigned, it is not sufficient for a dealer claiming refund under Section 18(2) of the Act to show that he has paid input tax on the goods purchased; that those goods are used in the manufacture and nothing more but there is duty upon the dealer to satisfy the Assessing Authority that the claim is not hit by any of the restrictions or conditions contained under Section 19 of the VAT Act. In this regard, it is essential for the Assessing Authority to embark upon the fact finding exercise to ascertain the quantum of loss of the goods which were purchased on which tax was paid vis-a-vis the goods manufactured from and out of the goods purchased and to examine as to whether they fall within any of the restrictions contained in Section 19 of the VAT Act. The Assessing Officer has to conduct an exercise by which it is to be ascertained as to whether the representation made by the dealer is justified and is not hit by any any of the restrictions and conditions contained in Section 19 and in particular Section 19(9) of the VAT Act.

(4) It is held that the Assessing Authorities are not justified in adopting uniform percentage as invisible loss and calling upon the dealer to reverse the input tax credit availed to that extent. Consequently, all notices issued to the petitioner for reopening and all consequential order passed reversing the input tax credit to the extent of either 4% or 5% or on adhoc percentage stands set aside. However, liberty is granted to the concerned Assessing Officer to issue appropriate show cause notices to the petitioners clearly setting out under what circumstances they propose to revise or call upon the petitioner to reverse refund sanctioned and after inviting objections proceed in accordance with law.

(5) The undertaking given by the dealer in Form W is with regard to information furnished for the purpose of verification by the Assessing Officer under Rule 11(2) of the

VAT Rules for being entitled to refund under Section 18(2). Therefore, it is not as if the Act does not provide a remedy in the event of a wrong or erroneous refund sanctioned when Section 18 cannot be treated as an independent provision but subject to restrictions and conditions under Section 19 of the VAT Act."

5. Though writ appeals challenging the aforesaid order are stated to have been filed, order therein and at this juncture I am inclined to follow the prevailing decision of the learned Single Judge as aforesaid.

6. In fine, the impugned assessments are set aside. Liberty is granted to the assessing officer to issue show cause notice setting out the circumstances under which the proposal to reverse the input tax credit is made and proceed in accordance with law thereafter to complete the assessments after hearing the petitioner. The writ petitions are disposed in the aforesaid terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1.The Principal Secretary / Commissioner of
Commercial Taxes, Ezhilagam,
Chepauk, Chennai-600 005.

2.The Commercial Tax Officer (FAC),
Pudukottai-I, Pudukottai, Pudukottai District.

+1 CC to M/s.R.HEMALATHA, Advocate (SR-74666[F] dated 11/07/2019)

W.P(MD)Nos.5650 to 5653 of 2014
10.07.2019

MS/16.09.2019/3P.4C