IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.17836 of 2016
and
W.M.P.No.15522 of 2016

Sri Rukmani Rolling Mill Private Limited,
Represented by its Director,
Yaduveer Ganapatisagar,
S.Y.No.267/268, Kothajogur Village,
Komaranapalli Panchayat,
Denkanikottai T.K.
Krishnagiri (Dt) - 635 114. ...Petitioner

Vs.

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

2.The Assistant Commissioner (CT),
Hosur (South) Assessment Circle,
Hosur. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, directing the 2nd respondent not to disallow the claim of input tax credit or refund as the case may be in so far as the issue related to visible/invisible/manufacturing loss is concerned unless the direction issued by the 1st respondent in Letter No.Acts.Cell.V/5197/2015 dated 27.05.2015 is complied with.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.R.Swarnavel
Government Advocate

O R D E R

The petitioner has filed the present Writ Petition seeking for a mandamus to restrain the respondent to disallowing the claim for input tax credit on invisible manufacturing loss.

2.A clarification was issued by the 1st respondent on 27.05.2015 bearing reference No.Acts.Cell-V/5197/2015 as per which credit was to be reversed on invisible loss. The relevant passage of the clarification reads as under:

> iii)Disputed reversal of 5% ITC towards invisible loss:
>
> In respect of invisible loss and reversal of input tax credit on that account, the assessees shall be given opportunity to prove with records as to the quantum of invisible loss of inputs in their manufacturing process and the costs of such loss. Reversal of input tax credit shall be applied only with reference to actual invisible loss based on records.

3.The issue as to whether the petitioner was required to reverse the input tax credit for invisible manufacturing of loss or not is now covered by a decision of this court in W.P.No.3172 of 2014 dated 04.12.2019. Relevant Portion of the order reads as under:-

> 5.In my view, the expression "inputs destroyed at some intermediary stage of manufacture" in sub clause (ii) of Section 19 (9)(iii) of TNVAT Act, 2006 will not take within its fold those inputs "consumed" in the manufacure of final product. Only when inputs are "destroyed at some intermediary stage of manufacture", 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". The authorities may therefore keep these observations while passing orders in the show cause notice which have been issued."

4. The respondent may therefore decide all pending proceeding to deny input tax credit on invisible manufacturing loss in the light of the above observations.

5.The Writ Petition stands disposed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jas

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

2.The Assistant Commissioner (CT),
Hosur (South) Assessment Circle,
Hosur.

+1cc to the Government Pleader (T) S.R.No.11332.
+1cc to Mr.R.Senniappan, Advocate, S.R.No.10695.

W.P.No.17836 of 2016
and
W.M.P.No.15522 of 2016

SSD(CO)

VSI-2(28.05.2020)