IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2020

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Writ Petition Nos.22304 to 22309 of 2016
and W.M.P.Nos.19028 to 19033 of 2016

M/.GBR Metals Pvt.Ltd.,
Rep.by its Director Venkatesh Rathi
No.4, Ramanan Road,
Chennai 600 079. .. Petitioner in all W.Ps.

/versus/

The Assistant Commissioner (CT),
Poeddunaickenpet Assessment Circle,
No.48/39, Rajaji Salai, Wavoo Mansion,
3rd Floor, Chennai 600 001. .. Respondent in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the respondent in TIN:33730281766/2007-08 in W.P.No.22304 of 2016, 33730281766/2008-09 in W.P.No.22305 of 2016 33730281766/2009-10 in W.P.No.22306 of 2016, 33730281766/2010-11 in W.P.No.22307 of 2016, 33730281766/2011-12 in W.P.No.22308 of 2016 and 33730281766/2012-13 in W.P.No.22309 of 2016 dated 31.5.2016 and quash the same.

For Petitioner : Mr.T.Pramodkumar Chopda
(In all W.Ps.)

For Respondents (In all W.Ps.) : Mr.A.NR.Jayaprathap
Govt.Advocate (T)

C O M M O N O R D E R

1. By this common order, these writ petitions are being disposed.

2. This is the second round of the writ petitions filed by the petitioner. The petitioner has filed a batch of writ petitions in W.P.Nos.19595 to 19601 of 2015 dated 08.07.2015. This Court had disposed the writ petitions with a direction to the respondent to pass fresh order on merits.

3. Pursuant to the said order, notice was issued to the petitioner and the petitioner had also filed its replies. In the impugned orders, the respondent has not only confirmed a demand on Input Tax Credit on manufacturing loss, but also goods which were traded by the petitioner sold as such.

4. I have considered the arguments of the learned counsel for the petitioner and the respondent.

5. The issue as to whether the petitioner was liable to pay /revise Input Tax Credit availed on various goods manufactured, is now covered by a decision of this Court rendered in M/s.Ran India Steels (P) Ltd., Rep.by its Managing Director vs. The Principal Secretary /Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and other, in W.P.No.3172 of 2014 dated 04.12.2019, it was been observed as under:

> 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", 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.
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> 6.Accordingly, this Writ Petition is disposed in terms of the above decision of this court. No cost. Consequently, connected Miscellaneous Petitions are closed.

6. Therefore, there is no question to denying Input Tax credit availed on goods manufactured and traded by the petitioner unless they were contrary to other provisions of the order. Since the respondent also included the turnover purportedly purchased by the petitioner and sold while

confirming the demand, I am of the view that the impugned orders. insofar as seek to demand tax on manufacturing loss on traded goods are liable to be set aside.

7. In the light of the above observation, the respondent is directed to pass appropriate orders on merits within a period of three months from the date of receipt of a copy of this order.

8. These writ petitions stand disposed with the above observation. No cost. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

kkd
To
The Assistant Commissioner (CT),
Poeddunaickenpet Assessment Circle,
No.48/39, Rajaji Salai, Wavoo Mansion,
3rd Floor, Chennai 600 001.

+1 CC to Mr.T.Pramodkumar, Advocate sr 18425.
+1 CC to Special Government Pleader sr 18555.

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VSNII(CO)
SP(29/07/2020)