IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	10.02.2020
Pronounced On	18.02.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.37654, 37655, 39635 & 39636 of 2016
and
W.M.P.Nos.32277, 32278, 33910 & 33911 of 2016

Simpsons & Company Ltd.,
(Represented by its General Manager),
No.861/862, Anna Salai,
Chennai - 600 002. ... Petitioner in all W.Ps.

vs

1.The Deputy Commissioner (CT) - IV,
Large Taxpayers Unit,
No.34, Dugar Towers, 5th Floor,
Marshallas Road, Egmore,
Chennai - 600 008.

2.Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

3.Government of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes Department,
Fort St. George, Chennai - 600 009. ... Respondents in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Prohibition, prohibiting the 1st respondent from proceedings further on the impugned Notices in TIN: 33590580021/2013-14 & TIN: 33590580021/2014-15 dated 26.09.2016 and TIN: 33590580021/2016-17/July, 16 & TIN: 33590580021/2016-17/August, 16 dated 13.10.2016 issued by the 1st respondent as it are contrary to law and palpably without jurisdiction.

For Petitioner : M/s. Lakshmi Kumaran & Sridharan for M/s.R.Charulatha in all W.Ps.

For Respondents : Mr.R.Swarnavel, Government Advocate in all W.Ps.

C O M M O N   O R D E R

By this common order, all the four writ petitions are being disposed.

2.The petitioner has challenged following notices issued to it:-

W.P.No.	Date	Assessment Year/ Period	Amounts proposed to be improved notice (Rs.)
W.P.No.37654/2016	. 09.2016	2013-14	24,35,550/-
W.P.No.37655/2016	. 09.2016	2014-15	1,16,86,733/-
W.P.No.39635/2016	13.10.2016	2016-17/ July 16	8,51,098/-
W.P.No.39636/2016	13.10.2016	2016/17 Aug. 16	12,54,916/-

3. These notices call upon the petitioner to provisionally reverse input tax credit on the inputs utilised in the manufacture of internal combustion engine liable to tax at the rate prescribed under Entry 44 of the 1st Schedule to Part C of the TNVAT Act, 2006 and cleared to Special Economic Zone located outside the State of Tamil Nadu.

4. The petitioner had effected sale to units located in Special Economic Zones outside the State of Tamil Nadu and therefore the 1st respondent has taken a stand that the petitioner was not entitled to proportionate input tax credit on the inputs used in the manufacture of ICE cleared to such units.

5. It is the contention of the respondents that the clearances to such units located in Special Economic Zones are exempted clearances within the meaning of Section 15 of TNVAT Act, 2006 and therefore the petitioner was liable to reverse proportionate credit as per the formula given in the impugned notices.

6. It is the contention of the petitioner that sales to units located in the Special Economic Zones though located outside the State of Tamil Nadu are nevertheless liable to be treated as zero rated sales within the meaning of Section 18 of the TNVAT Act, 2006 and therefore the input tax credit availed by the petitioner on inputs used in the manufacture of ICE which were eventually supplied to such units cannot be denied.

7. It is further submitted that sale to units located in Special Economic Zone were not exempted sale within the meaning of Section 15 of the TNVAT Act, 2006. It is the contention of the petitioner that the respondents cannot invoke the definition of zero rating in Section 18(1)(ii) of the TNVAT Act, 2006 to deny input tax credit.

8. It is submitted that the petitioner has not claimed any exemption from payment of tax under Section 15 of the TNA VAT Act,2006. The sale of the internal combustion engines by the petitioner was on the strength of Form 1 Declaration under Section 8(6) of the Central Sales Tax Act, 1956 read with Rule 12(11) of the Central Sales Tax Rules, 1957 and therefore the petitioner cannot be denied of the proportionate input tax credit.

9. I have heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

10. The grant of input tax credit is governed by Section 19 (1) of the TNVAT Act, 2006 for the purpose specified in sub-Section (2). The circumstances specified in sub-Section (2) to Section 19 of the Act is reproduced below:-

> Section 19 - Input tax credit
> (2) Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of -
> (i) re-sale by him within the State; or
> (ii) use as input in manufacturing or processing of goods in the State; or
> (iii) use as containers, labels and other materials for packing of goods in the State; or
> (iv) use as capital goods in the manufacture of taxable goods.
> (v) sale in the course of inter-State trade or commerce falling under sub-Section (1) of Section 8 of the Central Sales Tax Act, 1956.
> (vi) Agency transactions by the principal within the State in the manner as may be prescribed.

11. From a reading of the above, it is clear that if goods are used for manufacturing or processing of goods in the state, a registered dealer would be entitled to avail credit on the tax paid by the seller.

12. Section 19(5) of the TNVAT Act, 2006 however contains certain restrictions in this regard. The restrictions in the said sub-Section read as under:-

> Section 19 - Input tax credit:-
> (5) (a) No input tax credit shall be allowed in respect of sale of goods exempted under Section 15
> (b) No input tax credit shall be allowed on tax paid or payable in other States or Union Territories on goods brought into this State from outside the State.
> (c) No input tax credit shall be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of inter-State trade or commerce falling under sub-Section (2) of Section 8 of the Central Sales Tax Act, 1956.

13. From a reading of the above provision, it is evident that input tax credit could be denied only Section 19(5)(a),(b) & (c) of the TNVAT Act, 2006 on inputs.

14. The restrictions in Section 19(5)(a) of the TNVAT Act, 2006, will apply only to such inputs which are bought and sold as such and not to inputs used in the manufacture of goods. 19 (5)(b) is not relevant for the present case.

15. Under Section 19(5)(c) of the TNVAT Act, 2006, no input tax credit can be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of inter-State trade or commerce falling under sub-Section (2) of Section 8 of the Central Sales Tax Act, 1956.

16. Thus, the sale effected under an exemption in terms of Section 8(6) is not covered by the exception in 19(5)(c) of the TN VAT Act, 2006.

17. The sale effected by the petitioner under Section 8(6) Central Sales Tax Act, 1956 is not liable to tax. Under the aforesaid provision, no tax is payable in respect of sale of any goods made by a dealer, in the course of inter-state trade or commerce to a registered dealer for the purpose of setting up, operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, re-

engineering, packaging or for use as packaging material or for use as packing or packing accessories in an unit located in any Special Economic Zones, or for development, operation and maintenance of Special Economic Zones, or for development, operation and maintenance of Special Economic Zone by the developer of the special economic zone, if such registered dealer has been authorised to establish that unit or to develop, operate and maintain such Special Economic Zone by the authorities specified by the Central Government in this behalf.

18. If the sale in question does not fall under Section 8(2) of the CST Act, 1956, but under Section 8(6) of the CST Act, 1956, the credit cannot be denied.

19. The sale of Internal Combustion Engine by the petitioner to units located in Special Economic Zones, outside the State of Tamil Nadu was not an exempted sale within the meaning of Section 15 of the TNVAT Act, 2006.

20. Such sale is neither exempted under 4th Schedule of the TNVAT Act, 2006 nor exempted under a Notification of the State Government as the expression of "Government" in Section 15 can only mean the "State Government" has defined Section 2(22) of the said Act.

21. Further, the restrictions that are contemplated in Section 19(5)(a)of the TNVAT Act, 2006, are quay inputs re traded as such and not on inputs which are used in the manufacture of finished goods while under Section 19(5)(c), restriction is only for sale which fall under Section 8(2) of the Central Sales Tax Act,1956.

22. Further sub-clause 4 to Section 19 contains a restriction on inputs tax credit, allowed on the tax paid in the State on the purchase of goods, in excess of 5% of tax relating to such purchases, subject to the conditions as may be prescribed for transfer to a place outside the State otherwise than by way of sale; or by use in manufacture of other goods and transfer to outside the State otherwise than by way of sale. However, this restriction is also not attracted in the facts of the present cases as there is a sale to a unit in Special Economic Zone though outside the State.

23. If the intention of the legislature was to restrict the credit on the inputs used in the manufacture and sale of such manufactured goods under all circumstances, the restriction would have been expressly incorporated in Section 19(5)(c) of the TNVAT Act, 2006.

24. Therefore, if Section 19(5) of the TNVAT Act, 2006 is applied plainly to the facts of the case, it is evident, credit cannot be denied on inputs merely because inputs were used in the manufacture of goods and such manufactured goods were sold to a buyer without payment of tax under Section 8(6) of the CST Act, 1956. Unless, there is a specific restriction imposed under the Act, credit cannot be denied.

25. In this connection reference may be made to the decision of the Court in Cape Brandy Syndicate vs. Inland Revenue Commissioners, (1921) 1 KB 64. The court held that in a taxing stated one has to merely look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

26. The above view has been followed by the Hon'ble Supreme Court in several cases [see BaidyanathAyurved Bhawan (P) Ltd. vs. Excise Commr., (1971) 1 SCC 4].

27. As there is no provision for denying credit under the circumstances, I am of the view that the demand proposed in the impugned notices may not be correct.

28. In the light of the above discussion, I am inclined to partly allow this writ petitions by relegating the petitioner to file a reply to the impugned notices within a period of thirty days from date of receipt of a copy of this order.

29. The respondent shall thereafter consider the submissions of the petitioner and pass appropriate orders in the light of the observations contained herein and in accordance with law.

30. These Writ Petitions stand partly allowed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

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To

1.The Deputy Commissioner (CT) - IV,
Large Taxpayers Unit,
No.34, Dugar Towers, 5th Floor,
Marshallas Road, Egmore,
Chennai – 600 008.

2.Commissioner of Commercial Taxes,
Chepauk, Chennai – 600 005.

3.The Secretary,
Government of Tamil Nadu,
Commercial Taxes Department,
Fort St. George, Chennai – 600 009.

+4ccs to Mr.Lakshmi Kumaran, Advocate, SR.No.13472.
+1cc to Government Pleader, SR.No.14343.

Common Order
in
W.P.Nos.37654, 37655, 39635
& 39636 of 2016
and
W.M.P.Nos.32277, 32278, 33910
& 33911 of 2016

NMI(CO)
CSR: 18.03.2020