IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 42130 to 42132 of 2016
and
W.M.P. Nos. 36049 to 36051 of 2016

M/s. Frontier Knitters Pvt. Ltd.,
Represented by its Managing Director
J.M. Thajtheen,
No.52, Process Server Street,
Tirupur-1. ... Petitioner in all W.Ps

Vs

The Assistant Commissioner (CT),
Central-I Circle, Tirupur. ... Respondent in all W.Ps

Prayer in W.P. No. 42130 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the files of the Respondent in TIN No.33702404967/2012-2013 dated 20.06.2016 and quash the same as being without jurisdiction and authority of law and contrary to the provisions of the TNVAT Act, 2006 in so far as the period related to the month of December 2012 to February 2013.

Prayer in W.P. No. 42131 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the files of the Respondent in TIN No.33702404967/2012-2013 dated 20.06.2016 and quash the same as being without jurisdiction and authority of law and contrary to the provisions of the TNVAT Act, 2006 in so far as the period related to the month of September 2012 to November 2012.

Prayer in W.P. No. 42132 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the files of the Respondent in TIN No.33702404967/2012-2013 dated 20.06.2016 and quash the same as being without jurisdiction and authority of law and contrary to the provisions of the TNVAT Act, 2006 in so far as the period related to the month of April 2012 to August 2012.

For Petitioner : Mr. R. Senniappan
(in all W.Ps)

For Respondent : Mr. A.N.R.Jayaprathap
Government Advocate (Tax)
(in all W.Ps)

COMMON ORDER

The Petitioner has filed these Writ Petitions, seeking for issuance of a Writ of Certiorari to call for the records on the files of the Respondent in TIN No.33702404967/2012-2013 dated 20.06.2016 and quash the same as being without jurisdiction and without the authority of law and contrary to the provisions of the TNVAT Act, 2006 in so far as the period related to the month of December 2012 to February 2013, September 2012 to November 2012 and April 2012 to August 2012.

2. Both the learned counsel for the Petitioner and the Respondent submits that issue is no longer res intergra and is covered by the decision of this Court rendered in the case of Ran India Private Limited Vs The Principal Secretary / Commissioner of Commercial Taxes, Chennai in W.P. No.3172 of 2014 which was passed on 04.12.2019. The said order reads as under:-

> "The present Writ Petition has been filed against the impugned circular dated 20.10.2011 bearing reference No. VAT/Cell/Roc.No. 37188/2011/Circular No.22/2011.
>
> 2.This issue is now covered by a decision of this Court in Interfit Techno Products Ltd. Vs Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam, Chennai and Another, (2015) 81 VST 389 (Mad).
>
> 3.In paragraph Nos.61 & 62, learned Single Judge has summarised his views as follows:-
>
>> 61. In the light of the above conclusion, the decision relied on by the learned counsel for the petitioner in the case of Binani Industries Limited v. Assistant Commissioner of Commercial Taxes VI Circle, Bangalore [2007] 6 VST 783 (SC) with regard to reopening of the assessment does not render assistance to

the case of the petitioners. Accordingly Question No. 6 is answered against the petitioners.

62. 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 per centage 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.

4.The Writ Petition is disposed in terms of the above decision of this Court referred to supra. There is no provision under the TNVAT Act, 2006, to call upon a dealer who is a manufacture to reverse credit on "invisible loss" of input in the course of manufacture of final product. TNVAT Rules, 2007 also does not speak about input-output norm. Further, Rules also do not contemplate 100% assimilation of inputs into final products. Section 19(9)(i), (ii) & (iii) of TNVAT Act, 2006 only deals with three situation when input tax is not available. They are as follows:-

(9) No input tax credit shall be available to a registered dealer for tax paid or payable at the time of purchase of goods,

if such-

(i) goods are not sold because of any theft, loss or destruction, for any reason, including natural calamity. If a dealer has already availed input tax credit against purchase of such goods, there shall be reversal of tax credit; or

(ii) inputs destroyed in fire accident or lost while in storage even before use in the manufacture of final products; or

(iii) inputs damaged in transit or destroyed at some intermediary stage of manufacture.

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.

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

3. Since the dispute is covered by the above decision, the impugned orders are quashed. These Writ Petitions are allowed by way of remand. The Respondent is directed to pass appropriate order within a period of three months keeping the

above observation. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

arb
To
The Assistant Commissioner (CT),
Central-I Circle, Tirupur.

+ 1 cc to Mr.R.Senniappan Advocate sr16399
+1 cc to Special Government pleader (Taxes) sr16929

W.P. Nos. 42130 to 42132 of 2016
and
W.M.P. Nos. 36049 to 36051 of 2016

aa08/06/2020