IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2020

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Writ Petition Nos.24135 & 24136 of 2014
& M.P.Nos.2 & 2 of 2014

M/s. Nirmal Pumps Pvt. Ltd.,
Rep. By its Managing Director - D.Soundararaj,
SF 434 Thaneerpandal Road, 10th Cross,
Peelamedu,
Coimbatore 641 004 ... Petitioner in both W.Ps

..vs..

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

2. The Assistant Commissioner (CT) (FAC),
Peelamedu North Circle,
Coimbatore 641 018 ... Respondent in both W.Ps

Prayer in W.P.No.24135 of 2014:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the first respondents herein in VAT Cell / ROC No.37188/2011/ Circular No.22/2011, dated 20.10.2011 and to quash the same as illegal and arbitrary.

Prayer in W.P.No.24136 of 2014:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the second respondent herein in his impugned proceedings made in TIN No.33052120969/ 2012-13 dated 20.02.2014, quash the same as illegal and arbitrary in so far as it is proposed to reverse the ITC on the invisible loss in the course of manufacture as Section 19 (9) (3) of TNVAT Act, 2006.

For Petitioner in both W.Ps.:Mr. S.Rajasekar

For Respondents in both W.Ps.:Mr. J.Ramesh, AGP., for R1
Ms. Dhanamadhri, AGP, for R2

C O M M O N   O R D E R

Today, these matters are taken up by this Court through Video Conferencing, CISCO Webex Meeting, on account of COVID-19.

2.Challenging the circular dated 20.10.2011 issued by the first respondent and the consequential notice dated 20.02.2014 issued by the second respondent relating to the assessment year 2012-13, proposing to reverse the ITC claimed in respect of the alleged invisible loss, the petitioner has filed the respective writ petitions.

3.The learned counsel for both sides jointly submitted that the issue involved herein is covered by the decision of this Court in Interfit Techno Products Ltd. v Principal Secretary/ Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another [(2015) 81 VST 389 (Madras)], wherein, it is held as follows:

> "62. 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 Vs. Assistant Commissioner of Commercial Taxes VI Circle, Bangalore and Others [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.
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> 63. In the result,
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> (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.
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> (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.

64. The Writ petitions are disposed of accordingly. No costs. Connected MPs are closed."

4.Following the aforesaid decision, which holds good to the facts of the present case, WP.No.24135 of 2014 praying to quash the circular dated 20.10.2011 issued by the first respondent, stands dismissed. However, W.P.No.24136 of 2014 stands allowed by setting aside the impugned notice dated 20.02.2014 issued by the second respondent. Since the notice issued is relating to the assessment year 2012-13, the second respondent / Assessing Officer shall decide the issue afresh, after issuing show cause notice to the petitioner clearly setting out the circumstances under which they propose to revise or call upon the petitioner to reverse refund sanctioned and after receiving their objections. Such notice be issued by the second respondent within a period of four weeks from the date of receipt of a copy of this order. On receipt of such notice, the petitioner shall submit their objections along with the required documents, if any, within a period of two weeks thereafter. On such submission, the second respondent shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner, within a period of four weeks therefrom. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//
Sub Assistant Registrar

srk

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

2. The Assistant Commissioner (CT) (FAC),
Peelamedu North Circle,
Coimbatore 641 018.

W.P.Nos.24135 & 24136 of 2014
& M.P.Nos.2 & 2 of 2014

MR(CO)
CB(31/07/2020)