IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2021

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.17012 of 2015
and
M.P.No.1 of 2015

Medopharm
(Represented by
Mr. Sardarmal Chordia, Partner)
"Medo House"
25, Pullyur II Main Road,
Kodambakkam,
Chennai-600 024. ...Petitioner

Vs

1. The Assistant Commissioner (CT),
MMDA Colony Assessment Circle,
No.10, Palaniappa Building,
Greams Road,
Chennai-600 006.

2. The State of Tamil Nadu
Represented by its Secretary,
CT & R Department,
Fort St. George,
Chennai-600 009. ...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the First respondent herein in his TIN:33830620047/2012-13, dated 30.04.2015, quashing the same as unconstitutional and violative of Article 304(a) of the Constitution of India in so far as it relates to the input tax credit of Rs.90,53,324.00/- being input tax credit reversed by the First respondent on inputs purchased inside the State of Tamil Nadu, stock transferred to the factory of the Petitioners at MALUR, Karnataka for job work and conversion into medicinal formulations, brought back and sold in Tamil Nadu on payment of VAT and the input tax credit of Rs.1,69,68,382.00/- being input tax credit reversed by the First Respondent as arising on account of difference in value between Annexure-II of the vendors of the Petitioners and Annexure I of the Petitioners as being contrary to the judgment of this Hon'ble Court in

[2013] 60 VST 283 (Mad.) (Sri Vinayaga Agencies vs. The Assistant Commissioner (CT), Vadapalani Assmt. Circle, Chennai) and the penalty of Rs.2,60,21,706.00/-.

For Petitioner : Mr.N.Sriprakash

For Respondent : Mr.V.Veluchamy
Government Advocate

ORDER

The Assessment Order dated 30.04.2015, is under challenge in the present writ petition.

2.The petitioner is a partnership firm and questioned the reversal of Input Tax Credit by placing reliance on the provisions of Section 19 (2) (ii) read with Section 19 (4) of the Tamil Nadu Value Added Tax Act, 2006, in a situation where inputs are purchased inside the State of Tamil Nadu, stock transferred for job work and conversion to a factory of the petitioners located outside the State of Tamil Nadu, but brought back to Tamil Nadu for sale on payment of VAT.

3.The issues raised in the present writ petition are no more res-integra as the Hon'ble Division Bench of this Court struck down Section 19 (2) (ii) of the VAT Act 2006, in the case of Patina Gold Ornaments Pvt.Ltd., vs. Assistant Commissioner (CT), Park Road Circle, Erode and Another reported in [2018] 50 GSTR 114 (Mad). The relevant portion of the judgment is extracted hereunder:

> "30.Therefore, having regard to the foregoing discussion, we are of the view that Section 19(2)(ii) of the 2006 Act is invalid to the extent that it denies availment of ITC in respect of those units which despatch tax suffered raw materials, i.e., bullion/worn-out jewellery for conversion into final product (i.e.,Jewellery) outside the State which upon conversion are received back and sold within the State of Tamil Nadu. Thus, according to us, the mere fact that the manufacturing unit is located outside the State of Tamil Nadu, cannot be the basis, for denial of ITC, under Section 19(1) of the 2006 Act. Clause (ii) of sub-section (2) of section 19 of the 2006 Act is, thus, declared bad in law.
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> 31.For the very same reason, we also hold that the respondents cannot retain ITC on goods purchased within the State, by invoking provision of section 19 (4) of the 2006 Act to the extent of rate of tax provided therein, ie., three per cent (which was the rate provided therein at the relevant point of time), as that would make the relief inefficacious since the

subject goods, i.e., bullion / worn-out jewellery on which tax credit was sought by the writ petitioner was imposed at the rate of one per cent.

32.The writ petition is, thus, allowed in the aforesaid terms, leaving parties to bear their own costs."

4.As far as the other issue relating to the mismatch, this Court has remanded the matters for fresh consideration by the Competent Authorities and on that point, this Court has considered the issue in W.P.Nos.43965 to 43969 of 2016 and an order was passed on 24.06.2021 and the relevant paragraphs are extracted hereunder:

"2.The learned Government Counsel appearing for the respondent has not raised any serious disputes with reference to the judgments passed by this Court in connected Writ Petitions. Thus, this Court is inclined to follow the order passed by this Court on 11.02.2019 in W.P.Nos.3680 and 3683 of 2019. The relevant paragraphs of the said judgment are extracted hereunder:

"4. The provisions of section 19(10)(a) of the Tamil Nadu Value Added Tax Act, 2006 (in short the 'Act') read as under:

" The registered dealer shall not claim input tax credit until the dealer receives an original Tax Invoice duly filled, signed and issued by a registered dealer from whom the goods are purchased, containing such particulars, as may be prescribed, of the sale evidencing the amount of input tax".

5. The statutory requirement for claim of ITC is production of proof of purchases by way of original invoices from the selling dealer. In the present case, Mr.Hariharan, learned counsel for the Department, does not dispute the position that the purchasers have duly produced the original invoices from the seller.

6. In such a circumstance, no reversal is liable to be made, in the absence of any further condition imposed upon the dealer in this regard.

7. A learned Single Judge of this Court in the case of JKM Graphics Solutions Private Limited Vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai, [2017] 99 VST (Mad), has considered an identical challenge raised by several dealers, wherein their claim for Input Tax Credit was reversed on an alleged mis-match between their

returns and the returns filed by the sellers. In conclusion, the Writ Petitions were allowed in the following terms:

> Admittedly, in the instant case, there is no challenge to the statutory provisions and the complaint of all the dealer is largely on the procedure adopted by the respective assessing officers. The principal Secretary and Commissioner of Commercial Taxes was conscious of the problems faced by the dealers as complaints were received which had lead to issuance of a circular as early as on April 1, 2015. The directions contained in the said circular are very pointed direction, but it is sad to note that the circular remains only on paper and seldom assessing officers follow the circular resulting in several assessments being set aside by the court and remanded for denova consideration. Thus, this court is fully convinced that the procedure adopted by the respondents, assessing officers in all these cases are half baked attempts, which have not yielded results and these cases are before this court or before the appellate authorities and all that the assessing officers can record is that they have issued show-cause notices or passed orders reversing the input-tax credit with no appreciable impact on the revenue collection.
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> The procedure adopted under the Maharashtra VAT Act appears to be a more reasonable procedure, the Rules have been so designed to constitute independent authorities, who will in exercise jurisdiction to dispose of the objections, etc. However, this court cannot legislate nor direct the State to legislate in a particular passion and it is for the state to bring about and appropriate rules and set procedures so that when discrepancy is noted while comparing the return with that of the figures available with the Department in their web portal, there should be an exercise carried out by the Department

within its level before calling upon the dealer to show cause. This can be achieved only if there is a centralised mechanism and if the present practice is allowed to prevail, it would only result in multiplicity of proceedings with more number of cases pending before the courts and appellate forums, thus jeopardizing the interest of revenue. Therefore, it is high time the Principal Secretary and Commissioner of Commercial Taxes in consultation with him officers lays out a detailed procedure as to how to take forward cases of mismatch, evolve a central mechanism, which can go into these aspect and furnish details in full form to the respective assessing officers, who can decide for themselves as to whether there is a case made out to call to call upon their dealer to explain. If this centralized mechanism is not put in place exclusively for such purpose, it would result in notices and orders being issued by the respective assessing officers without even the knowledge of the assessing officers of the other end dealer resultantly no action being taken against other end dealer, assuming, he is at fault. Therefore, it is high time the Department wakes up and stops the one way approach and examine the matter in a holistic manner so that the defaulting dealer is brought to books.

Hence, for all the above reasons, all the writ petitions are allowed and the notices/orders either original or appellate or revisional are set aside and the matters are remanded to the respective assessing officers, to undertake a fresh exercise by conducting a thorough enquiry in consultation with the assessing officers of the other end dealer for which purpose the Commissioner of Commercial Taxes shall empower the assessing officers to seek information from other circles as well and in the mean time to evolve a centralized mechanism to exclusively deal with the cases of mismatch and while doing so, the Principal Commissioner shall take note of the procedures adopted by the other States, more particularly, in Maharashtra, Gujarat and Delhi and if any statutory amendments have to be made, make appropriate recommendations to the State Government, and till then to devise a procedure which is fair and reasonable and afford an opportunity to the dealer to put forth his case and establish that he is entitled to the concession/set-off availed.

Since these writ petitions have been allowed and the impugned orders have been set aside and the matters have been remanded for fresh consideration the petitioners/dealers are not entitled to raise a plea of limitation, when fresh show cause notices are issued and they are directed to submit their explanation to enable the assessing officers to adjudicate their case.

8. In the light of the above, this Writ Petition is allowed and the impugned order of assessment is set aside. The assessment will be re-done as indicated in the order in the case of JKM Graphics (supra) pursuant to fresh show case notice to be issued by the Assessing Authority. No costs. Consequently, connected miscellaneous petitions are closed. ”

3.In view of the judgment cited supra, all these Writ Petitions stand allowed and the impugned orders of assessment are set aside. The assessment will be re-done as indicated in the order in the case of JKM Graphics, cited supra, pursuant to fresh show cause notice to be issued by the Assessing Authority. No costs.”

5.In view of the judgments cited supra, the impugned order of Assessment passed in proceedings TIN:33830620047/2012-13, dated 30.04.2015 is set aside and the respondents are directed to adjudicate the issues based on the principles laid down in the judgments cited supra, by affording opportunity to the writ petitioner and pass fresh Assessment Order by following the procedures as contemplated.

6. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Pns/Kbs

To

1.The Assistant Commissioner (CT),
MMDA Colony Assessment Circle,
No.10, Palaniappa Building,
Greams Road,
Chennai-600 006.

2.The Secretary,
The State of Tamil Nadu
CT & R Department,
Fort St. George,
Chennai-600 009.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.40860
+1cc to Special Government Pleader(Taxes), S.R.No.41835

W.P.No.17012 of 2015

BP(CO)
CB(17/09/2021)