IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.22040 & 22041 of 2010

Lakshmi Machine Works Ltd.,
Periyanayakan Palayam,
Coimbatore - 641 020. ..Petitioner in both W.Ps

vs

1. The Deputy Commissioner (CT)
   Fast Track Assessment Circle II
   Dr.Balasundaram Road,
   Commercial Taxes Complex,
   Coimbatore - 641 018.

2. The Special Commissioner and Commissioner (CT)
   Ezhilagam Buildings,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

3. The State of Tamil Nadu,
   Rep.by the Secretary,
   Commercial Taxes Department
   Fort St.George,
   Chennai - 600 009. ..Respondents in both W.Ps

Prayer in W.P.No.22040 of 2010: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records of the case from the file of the first respondent in his impugned order dated 03.02.2010 in VAT/TIN No.33122020099/2009-10, quash the same.

Prayer in W.P.No.22041 of 2010: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring the circular of the second respondent dated 08.08.2007 in Lr.NoVAT Cell/30800/2007 VCC No.1003 as ultravires the provisions of the Tamil Nadu Value Added Tax Act, 2006, arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India.

For Petitioner : M/s.Lakshmi Sriram
[in both W.Ps]

For Respondents : Mr.V.Nanmaran
[in both W.Ps] Government Advocate

COMMON ORDER

The relief sought for in W.P.No.22040 of 2010 is call for the records of the case from the file of the first respondent in his impugned order dated 03.02.2010 in VAT/TIN No.33122020099/2009-10 and quash the same and the relief sought for in W.P.No.22041 of 2010 is to declare the circular of the second respondent dated 08.08.2007 in Lr.NoVAT Cell/30800/2007 VCC No.1003 as ultravires the provisions of the Tamil Nadu Value Added Tax Act, 2006, arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India.

2. The petitioner is a company, manufacturing and selling textile machinery and CNC Machinery and a registered dealer under the provisions of the Tamil Nadu General Sales Tax Act, 1959.

3. The learned counsel for the petitioner made a submission that with reference to the Reversal on sales to Special Economic Zone units in other States, this Court passed an order in W.P.No.37654 of 2016 on 18.02.2020. The issues are similar and therefore, the benefit of the said order is to be extended to the petitioner with reference to Annexure-I to the impugned order. Regarding items 2 and 3 to the Annexure-I to the impugned order, the learned counsel for the petitioner fairly made a submission that a liberty is to be granted to prefer an appeal to the Appellate authority.

4. In view of the said submission, this Court is not inclined to go into the disputed facts as the judgment dated 18.02.2020 cited supra, applies with reference to Item No.1 to Annexure-I to the impugned order.

5. The learned counsel appearing on behalf of the respondents has no serious objection with reference to the submission for preferring an appeal to the Appellate authority regarding Items 2 and 3 to Annexure-I. This being the submissions made on behalf of the respective parties to the lis on hand, this Court is inclined to consider the same.

6. This Hon'ble High Court passed an order on 18.02.2020 and the relevant paragraphs 3, 4, 5, 6, 24, 28, 29 and 30 are extracted hereunder:

> "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 1 st 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 1 st 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.

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.

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."

7. Thus, the petitioner is entitled to avail the benefit of the said judgment of this Court dated 18.02.2020 passed in W.P.No.37654 of 2016 as far as Item No.1, Annexure-I to the

impugned order dated 03.2.2010 relating to reversal on sales to Special Economic Zone units in other States. With reference to item No.2, i.e., the Sale of Machinery to Educational Institutions in other State and item No.3 i.e., Sale of Machinery to Educational Institutions within the State, the petitioner is at liberty to prefer an appeal in a prescribed format and by complying with the procedures as contemplated within a period of four weeks from the date of receipt of a copy of this order. If any such appeal is received by the Appellate authority, the same is directed to be disposed of on merits and in accordance with law and by affording opportunity to the parties concerned as expeditiously as possible.

8. With these observations, both the writ petitions stand disposed of. No costs.

-s/d-
Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

Kak
To
1. The Deputy Commissioner (CT)
   Fast Track Assessment Circle II
   Dr.Balasundaram Road,
   Commercial Taxes Complex,
   Coimbatore – 641 018.

2. The Special Commissioner and Commissioner (CT)
   Ezhilagam Buildings,
   Ezhilagam, Chepauk,
   Chennai – 600 005.

3. The Secretary,
   Commercial Taxes Department
   Fort St.George,
   Chennai – 600 009.

+2 Ccs to Mr. Lakshmi Sriram, Advocate sr 29289.
+1 CC to The Special Government Pleader(T) sr 29341.

W.P.Nos.22040 & 22041 of 2010

SRA(CO)
SP(15/07/2021)