IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.2885, 2888, 2890,3930, 3936 and 3933 of 2020
& WMP Nos.3341, 3345, 3336, 4664, 4656 and 4661 of 2020

M/s.ARS Steels & Alloy International Pvt. Ltd.,
rep. By its Deputy Director: N.Prabu,
No.D-109, 2nd Floor, LBR Complex,
Chinthamani, Anna Nagar East,
Chennai - 600 102.
…Petitioner in WPs.2885, 2888 & 2890/2020

GBR Metals Pvt. Limited,
rep. By its Director Venkatesh Rathi,
N.4, Ramanan Road,
Sowcarpet, Chennai 600 079.
.... Petitioner in WPs.3930, 3936 & 3933/2020

Vs.

The State Tax Officer,
Group - I,
Inspection, Intelligence - I,
No.1, 1st Floor, Greams Road,
Chennai - 600 006. ...Respondent in Wps.2885, 2888 & 2890 /2020

State Tax Officer,
Group - II/Inspection, Intelligence- I,
Office of the State Tax Officer Group - II/ Inspection,
Intelligence - I,
No.1, CT Admin Building,
Greams Road, Chennai 600 006.
.... Respondent in Wps.3930, 3936 & 3933/2020

Common Prayer in Wps.2885, 28888, 2890/2020: Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for the records relating to the order in GSTIN:33AALCA9425HIZL/2017-18, 2018-19 & 2019-2020 respectively dated 29.11.2019 passed by the respondent and quash the same as without authority of law, contrary to law and to settled law and violative of principles of natural justice.

Common prayer in Wps.3390, 3936 & 3933/2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari or any other appropriate Writ or order or directions as this Honourable Court deem fit and proper calling for the records on the file of the Respondent in proceedings GST In.33AACCG5851AIZ4/ 2017-18 dated 01.11.2019, 2019-20 dated 21.11.2019 & 2018-19 dated 01.11.2019 respectively passed by the Respondent and the consequential Notice for interest GST IN.33AACCG5851A1Z4/ 2017-18 dated 01.11.2019, 2019-20 dated 21.11.2019 & 2018-19 dated 01.11.2019 respectively, issued by the respondent and quash the order and the Notice as arbitrary and illegal and pass such further or other orders as this Honourble court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Petitioner in W.P.Nos.2885, 2888 and 2890 of 2020 : Mr.M.A.Mudimannan

For Petitioner in W.P.Nos.3930, 3933 and 3936 of 2020 : Mr.Joseph Prabakar

For Respondents in the above W.Ps. : Mr.TNC.Kaushik Government Advocate

COMMON ORDER

This batch of Writ Petitions relates to two sets of assessment orders passed in the case of two assessees under the provisions of Goods and Services Tax Act, 2017 (in short 'GST Act') for the periods 2017-18, 2018-19 and 2019-20. They are disposed by way of this common order, since the legal issue that arises in these cases is one and the same.

2. In W.P.No.3936 of 2020, it is argued by Mr.Joseph Prabakar, learned counsel for the petitioner that an additional issue is raised in regard to stock reconciliation. The admitted position as far as this issue is concerned is that the vehicle movement register correlating to the vehicle gate passes issued, have been specifically sought for by the authorities but not produced at the time of assessment. Though the learned counsel for the petitioner states that the details have produced before this Court, learned counsel for the respondent would point out that this issue is factual in nature and as such, it would be better that the petitioner approach the appellate authority by way of a statutory appeal.

3. I agree, Since the evidences in support of the petitioner's stand have been produced only at this stage, it would be appropriate that this issue should be dealt with by the departmental authorities at the first instance. The petitioner is permitted to file a statutory appeal as regards this issue within a period of four weeks (4) from today.

4. As far as W.P.Nos.2885, 2888 and 2890 of 2020 are concerned, Mr.Mudimannan, learned counsel for the petitioner submits that apart from the legal issue raised in these Writ Petitions, statutory appeals have been filed with regard to the other issues.

5. This order is thus confined to a decision on the legal issue as to whether a reversal of Input Tax Credit (ITC) is contemplated in relation to loss arising from manufacturing process.

6. The petitioners are engaged in the manufacture of MS Billets and Ingots. MS scrap is an input in the manufacture of MS Billets and the latter, in turn, constitutes an input for manufacture of TMT/CTD Bars. There is a loss of a small portion of the inputs, inherent to the manufacturing process. The impugned orders seek to reverse a portion of the ITC claimed by the petitioners, proportionate to the loss of the input, referring to the provisions of Section 17(5)(h) of the GST Act.

7. As regards the Legislative history of this provision, the erstwhile Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act') contained an equivalent provision in Section 19 thereof, which deals with various situations arising from the grant and reversal of ITC. Section 19 (1) grants eligibility to ITC of the amount of tax paid under the TNVAT Act by a registered dealer. It sets out situations where such ITC shall be denied as well.

8. The provisions of Section 19, as relevant for the issue dealt with in these matters, are extracted below:

> 19. Input tax credit .-
>
> (1) There shall be input tax credit of the amount of tax paid Omitted[or Payable] under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule :
>
> Provided that the registered dealer, who claims input tax credit, shall establish that the tax due On purchase of goods has actually been paid in the manner prescribed by the registered dealer who sold such goods and that the goods have actually been delivered Provided further that the tax deferred under section 32 shall be deemed to have been paid under this Act for the purpose of this sub-section.
>
> ....
>
> (8) No input tax credit shall be allowed to any registered dealer in respect of any goods purchased by him for sale but given away by him by way of free sample or gift or goods consumed for personal use.
>
> (9) No input tax credit shall be available to a registered dealer for tax paid Omitted[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.

9. The prescription in Section 19 is echoed in the provisions of Section 17 of the GST Act. Section 17 (1) to (4) set out the entitlement of the assessee to ITC. Sub-section (5) and its sub-clauses provide for situations where ITC claimed shall be restricted and read as follows:

> 17. Apportionment of credit and blocked credits.
>
> (5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—
>
> ....
>
> (c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
> (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.
> Explanation.-- For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;
> (e) goods or services or both on which tax has been paid under section 10;
> (f) goods or services or both received by a non-resident taxable person except on goods imported by him;
> (g) goods or services or both used for personal consumption;
> (h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
> (i)any tax paid in accordance with the provisions of sections 74, 129 and 130.

10. The impugned assessment orders reject a portion of ITC claimed, invoking the provisions of clause (h) extracted above. This relates to goods lost, stolen, destroyed, written off or disposed by way of gift or free samples. In my considered view,

the loss that is occasioned by the process of manufacture cannot be equated to any of the instances set out in clause (h) above.

11. The situations as set out above in clause (h) indicate loss of inputs that are quantifiable, and involve external factors or compulsions. A loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself.

12. In the case of Rupa & Co. Ltd. V. Cestat, Chennai (2015 (324) ELT 295), a Division Bench of this Court decided a question of law in regard to the entitlement to Cenvat credit involving the measure of inputs used in the manufacturing process, in terms of the provisions of Section 9A and 2(g) of the CENVAT Credit Rules, 2002.

13. In that case, a certain amount of input had been utilised by the assessee, whereas the input in the finished product was marginally less. The department proceeded to reverse the cenvat credit on the difference between the original quantity of input and the input in the finished product.

14. The Bench, noticing at paragraph 13 that some amount of consumption of the input was inevitable in the manufacturing process, held that cenvat credit should be granted on the original amount of input used notwithstanding that the entire amount of input would not figure in the finished product. They state at paragraph 13 as follows:

> 13. To say that what is contained in finished product is only a quantity of all the inputs of the same weight as that of the finished product would presuppose that all manufacturing processes would never have an inherent loss in the process of manufacture. The expression 'inputs of such finished product', 'contained in finished products' cannot be looked at theoretically with its semantics. It has to be understood in the context of what a manufacturing process is. If there is no dispute about the fact that every manufacturing process would automatically result in some kind of a loss such as evaporation, creation of by-products, etc., the total quantity of inputs that went into the making of the finished product represents the inputs of such products in entirety.'

15. In the light of the discussion as above, I am of the view that the reversal of ITC involving Section 17(5)(h) by the revenue, in cases of loss by consumption of input which is inherent to manufacturing loss is misconceived, as such loss is not contemplated or covered by the situations adumbrated under Section 17(5)(h).

16. The impugned orders to the above extent are set aside. Writ Petitions in W.P.Nos.2888, 2890 and 3936 of 2020 are partly

allowed and W.P.Nos.2885, 3930 and 3933 of 2020 are allowed in full. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The State Tax Officer,
Group – I,
Inspection, Intelligence – I,
No.1, 1st Floor, Greams Road,
Chennai – 600 006.

2.State Tax Officer,
Group – II/Inspection, Intelligence- I,
Office of the State Tax Officer Group – II/ Inspection,
Intelligence – I,
No.1, CT Admin Building,
Greams Road, Chennai 600 006.

Copy To

The Section Officer,
Criminal Section, High Court,
Madras.

+1cc to Mr.K.Jayachandran, Advocate, S.R.No. 29524

+1cc to the Special Government Pleader(Taxes), S.R.No.29342, 29344

W.P. Nos.2885, 2888, 2890,3930, 3936 and 3933 of 2020
& WMP Nos.3341, 3345, 3336, 4664, 4656 and 4661 of 2020

SKY(CO)

GN(22/07/2021)