IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2021

CORAM

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

W.P.No.22701 of 2016
and
W.M.P.No.19396 of 2016

Tvl.Venkatachalapathy Oil Mill,
Rep.by its Proprietor,
T.V.Rajamanickam,
No.4/147, Nachinampatti,
H.Thottampatti Post,
Harur, Dharmapuri District. ...Petitioner

Vs

The Commercial Tax Officer,
Harur Assessment Circle,
Harur, Dharmapuri District. ... Respondent

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 respondent in TIN. 33483340362/2011-12 dated 13.05.2016 and quash the same.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.V.Veluchamy
Government Advocate

O R D E R

The Order dated 13.05.2016, is under challenge in the present writ petition.

2.The issue raised is relating to the Input Credit Tax and the said issues are considered by this Court and order was passed in W.P.No.33280 of 2019, dated 11.03.2021 and the relevant paragraphs are extracted hereunder:

> “13. As per the objects, the substitution of the provision is prospective. Where an entity whose

turnover is less than taxable limit has collected tax and remitted it into the Treasury in time, it is now given the benefit of ITC.

14. The grant of credit is conditional upon the status of a dealer as taxable, and hence a dealer falling outside the ambit of taxability was not extended the benefit of ITC, which is a concession under the statute, as seen from a reading of the charging section, Section 3, read with Section 19, dealing with Input tax credit.

15. The position in the present writ petition is however, different and distinguishable. The petitioner is admittedly, a dealer whose turnover far exceeds the threshold of taxability. It is only by virtue of the exemption provided under Schedule that it might escape taxability, if it so chooses. Such choice, in my view, must be its. Thus, in this case, there is no bar under the statute for availment of credit, subject to the tax liability being met in full. The bar under Section 19 (5)(a) applies only in cases of sale of goods exempted under section 15 and not where such exemption is provided but not availed. The purpose of the bar under section 19(5)(a) is to deny a double benefit to an assessee and there has, in this case, been no double claim as admittedly, the tax has been remitted in entirety. The provisions of Section 41(1) refer to a different situation and do not advance the case of the revenue in the facts and circumstances of this case.

16. The feature of input tax credit is what gives value added taxes their main economic characteristic, that of neutrality. The full right to deduction of input tax through the supply chain, with the exception of the final consumer, ensures neutrality of the tax, whatever be the nature of the product, the structure of the distribution chain and the technical means used for its delivery, either via brick and mortar establishments, physical delivery or the Internet. This is a measure of avoiding the ills of cascading taxes. To deny the petitioner the benefit of ITC by thrusting an exemption not claimed by it, upon it, will, in my view, be contrary to the scheme of the enactment.

17. This writ petition is allowed. No costs. Connected miscellaneous petitions are closed."

3. In view of the fact that the present writ petition is also on the same issue, the impugned order passed by the

respondent in proceedings TIN. 33483340362/2011-12, dated 13.05.2016 is quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CSVII)

// True Copy//

Sub Assistant Registrar

Pns

To

The Commercial Tax Officer,
Harur Assessment Circle,
Harur, Dharmapuri District.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.39980
+1cc to the Government Pleader,(Taxes) S.R.No.40527

W.P.No.22701 of 2016 and
W.M.P.No.19396 of 2016

PL(CO)
CT(03/09/2021)