IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.4722 & 4723 of 2015
and MP.Nos.1 and 2 of 2015

M/s.Shanmuga Salt & Chemicals,
Rep. by its Proprietor - V.Rajamanickam,
S/o. T.M.Velusamy, 49 years,
No.41, Cheran Street,
Bhavani Main Road,
Erode - 638 004. ... Petitioner in both WPs

Vs

The Assistant Commissioner (CT),
Chithode Assessment Circle,
Erode. ...Respondent in both WPs

Common Prayer: Writ petitions filed under Article 226 of the Constitution of India to issue a writ of Mandamus to call for the records on the file of the respondent in his impugned proceedings made in TIN 33593063027/07-08 and 08-09 respectively dated 13.01.2015 quash the same as illegal and contrary to the scheme of the Act.

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

For Respondent (in both W.Ps) : Mr.M.Hariharan, Additional Government Pleader

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COMON ORDER

By this common order both the writ petitions are being disposed of.

2. In these two writ petitions, the petitioner has challenged the impugned orders dated 13.01.2015 passed by the respondent for the assessment years 2007-08 and 2008-09.

3. The case of the petitioner is that the petitioner effected sales to 100% EOU which are zero rated sale under Section 18 of the TNVAT Act, 2006. As per Section 18(2), a "dealer, who makes zero rate sale, shall be entitled to refund of input tax paid by him on purchase of those goods, which are

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exported as such or consumed or used in the manufacture of other goods that are exported as specified in sub-section (1) subject to such restrictions and conditions as may be prescribed".

4. According to the respondent, the petitioner should have filed a refund claim in terms of sub clause (2) of Section 18 of the TNVAT, 2006. On the other hand, it is the case of the petitioner that under sub-section (1), a "dealer is eligible for input tax credit or refund of the amount of the tax paid on the purchase of goods specified in the First Schedule including capital goods, by a registered dealer in the State, subject to such restrictions and conditions as may be prescribed".

5. The learned counsel for the petitioner submits that the petitioner has not claimed refund of Input Tax Credit under Section 18(2) and therefore, question of filing a refund claim in Form W under Rule 11 of Tamil Nadu Value Added Tax, 2007 does not arise.

6. I have considered the argument of the learned counsel for petitioner and learned counsel for the respondent. I have also perused Section 18 of the TNVAT, Act 2006. It is very clear. There are two options available under the scheme of Section 18. In respect of sale effected to 100% EOU, a dealer is entitled to adjust the Input Tax Credit or claim refund under sub clause (2) to Section 18. The petitioner has opted to adjust the Input Tax Credit. The petitioner has not opted to claim the refund of Input Tax Credit subject on the sale effected to 100% EOU under sub clause (2) to Section 18.

7. Under these circumstances, the impugned orders passed by the respondent holding that the petitioner was not entitled to refund and consequently not entitled to adjust the Input Tax Credit, is not sustainable. Accordingly, the impugned orders to that extent is set aside leaving the other issue open for the petitioner to take it on appeal before the Appellate Court, if desired.

8. Accordingly, these writ petitions are partly allowed. Since the limitations for filing appeal before the Appellate Deputy Commissioner has already expired, a grace period of 30 days is granted to the petitoner for filing appeal before such appellate authority within a period of 30 days from the date of receipt of copy of this order, subject to other requirements of the Act. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Chithode Assessment Circle,
Erode.

2. The Deputy Commissioner (CT),
Chithode Assessment Circle,
Erode.

+1cc to Mr.R.Hemalatha , Advocate SR.No. 9572
+1 cc to Spl Government Pleader taxes Sr.No. 10053

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A.SK(18.03.2021)

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