



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2021

CORAM

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

W.P.No.11632 of 2014
and
M.P.Nos.1, 2 & 3 of 2014

FASHION KNITS

Government Recognised Star Export House,
81, 82, Angeripalayam Main Road,
Gandhi Nagar (PO),
Tirupur - 641 603.

Represented by its Partner, R.Ramu

... Petitioner

Vs

1.The Principal Secretary /
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai.

2.The Assistant Commissioner (CT)
Tirupur - I Assessment Circle,
Tirupur.

3.The Commercial Tax Officer,
Enforcement III, Tirupur.

4.The State of Tamilnadu
Represented by its Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st respondent herein in VAT Cell/Roc.No./37188/2011 (Circular No.22/2011) dated 20.10.2011, quash the same and consequently forbear the 2nd respondent from reducing 5% of the refund claim of the petitioner on the estimated invisible loss of input yarn and visible loss of wastages accrued in the manufacture of knitted garments in the State of Tamil Nadu and exported.



WEB COPY

For Petitioner : Mr.M.Hariharan

For Respondents: Mr.V.Nanmaran
Government Advocate

O R D E R

The relief sought for in the present writ petition is to call for the records of the 1st respondent herein in VAT Cell/Roc.No./37188/2011 (Circular No.22/2011) dated 20.10.2011, quash the same and consequently forbear the 2nd respondent from reducing 5% of the refund claim of the petitioner on the estimated invisible loss of input yarn and visible loss of wastages accrued in the manufacture of knitted garments in the State of Tamil Nadu and exported.

2. With reference to the similar prayer, this Court has considered the issues and passed an order dated 04.12.2019 in W.P.No.3172 of 2014 and the relevant paragraphs are extracted hereunder:

"2.This issue is now covered by a decision of this Court in Interfit Techno Products Ltd. Vs Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam, Chennai and Another, (2015) 81 VST 389 (Mad).

3.In paragraph Nos.61 & 62, learned Single Judge has summarised his views as follows:-

61. In the light of the above conclusion, the decision relied on by the learned counsel for the petitioner in the case of Binani Industries Limited v. Assistant Commissioner of Commercial Taxes VI Circle, Bangalore [2007] 6 VST 783 (SC) with regard to reopening of the assessment does not render assistance to the case of the petitioners. Accordingly Question No. 6 is answered against the petitioners.

62. In the result,

(1) the challenge to the impugned circular is held to be unnecessary since the circular is a non statutory circular and is in the nature of guideline and the prayer for quashing the circular is rejected.

(2) Section 18 of the TNVAT Act is not an independent or a separate stand alone provision under the provisions of TNVAT Act but subject to other provisions of the Act including Section 19 of the VAT Act.



WEB COPY

(3) For the reasons assigned, it is not sufficient for a dealer claiming refund under Section 18(2) of the Act to show that he has paid input tax on the goods purchased; that those goods are used in the manufacture and nothing more but there is duty upon the dealer to satisfy the Assessing Authority that the claim is not hit by any of the restrictions or conditions contained under Section 19 of the VAT Act. In this regard, it is essential for the Assessing Authority to embark upon the fact finding exercise to ascertain the quantum of loss of the goods which were purchased on which tax was paid vis-a-vis the goods manufactured from and out of the goods purchased and to examine as to whether they fall within any of the restrictions contained in Section 19 of the VAT Act. The Assessing Officer has to conduct an exercise by which it is to be ascertained as to whether the representation made by the dealer is justified and is not hit by any any of the restrictions and conditions contained in Section 19 and in particular Section 19(9) of the VAT Act.

(4) It is held that the Assessing Authorities are not justified in adopting uniform percentage as invisible loss and calling upon the dealer to reverse the input tax credit availed to that extent. Consequently, all notices issued to the petitioner for reopening and all consequential order passed reversing the input tax credit to the extent of either 4% or 5% or on adhoc percentage stands set aside. However, liberty is granted to the concerned Assessing Officer to issue appropriate show cause notices to the petitioners clearly setting out under what circumstances they propose to revise or call upon the petitioner to reverse refund sanctioned and after inviting objections proceed in accordance with law.

(5) The undertaking given by the dealer in Form W is with regard to information furnished for the purpose of verification by the Assessing Officer under Rule 11(2) of the VAT Rules for being entitled to refund under Section 18(2). Therefore, it is not as if the Act does not provide a remedy in the event of a wrong or erroneous refund sanctioned when Section 18 cannot be treated as an independent provision



but subject to restrictions and conditions under Section 19 of the VAT Act.

4. The Writ Petition is disposed in terms of the above decision of this Court referred to supra. There is no provision under the TNVAT Act, 2006, to call upon a dealer who is a manufacture to reverse credit on "invisible loss" of input in the course of manufacture of final product. TNVAT Rules, 2007 also does not speak about input-output norm. Further, Rules also do not contemplate 100% assimilation of inputs into final products. Section 19(9)(i), (ii) & (iii) of TNVAT Act, 2006 only deals with three situation when input tax is not available. They are as follows:-

(9) No input tax credit shall be available to a registered dealer for tax paid 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.

5. In my view, the expression "inputs destroyed at some intermediary stage of manufacture" in sub Clause (iii) of Section 19(9)(iii) of TNVAT Act, 2006 will not take within its fold those inputs "consumed" in the manufacture of final product. Only when inputs are "destroyed at some intermediary stage of manufacture", reversal of input tax credit is warranted. They would be instance of inputs which are withdrawn at an intermediary stage of manufacture and are incapable of being used further and are sold as scrap/waste or physically destroyed by an assessee having no residual value. Such inputs alone can be construed as "inputs destroyed at some intermediary stage of manufacture". There is no scope for reversal of input tax credit on



inputs which get consumed during the course of manufacture as "invisible loss". The authorities may therefore keep these observations while passing orders in the Show Cause Notice which have been issued.

WEB COPY

6. Accordingly, this Writ Petition is disposed in terms of the above decision of this court. No cost. Consequently, connected Miscellaneous Petitions are closed."

3. In view of the judgment cited supra, the present writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Pns
To

1. The Principal Secretary /
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai.
2. The Assistant Commissioner (CT)
Tirupur - I Assessment Circle,
Tirupur.
3. The Commercial Tax Officer,
Enforcement III, Tirupur.
4. The Secretary,
The State of Tamilnadu
Commercial Taxes and Registration Department,
Fort St. George, Chennai.

+1cc to Mr.S.Raveekumar, Advocate Sr.35869
+1cc to the Special Government Pleader SR.34696

W.P.No.11632 of 2014
and M.P.Nos.1, 2 & 3 of 2014

um[co]
srg 18/08/2021