

;IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2021

CORAM

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

W.P.No.11707 of 2014

and

M.P.No.1 of 2014

Tvl.K.P.S.Oil Mills,

Represented by its Partner, K.Paramasivam,

117, Bhavani Road, Erode - 638 004.

...Petitioner

Vs

1.The Commercial Tax Officer,
Group-IV, Enforcement (South),
Chennai - 600 006.

2.The Joint Commissioner (CT),
(Enforcement), Coimbatore.

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

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the 1st respondent in his proceedings in form - VSI-I and quash the surprise inspection - report dated 17.03.2014, 18.03.2014 and 19.03.2014 as being without jurisdiction and authority of law and further direct the 3rd respondent not to implement or use the inspection results against the petitioner for the purpose of assessment / re-assessment.

For Petitioner : Mr.R.Senniappan

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 on the files of the 1st respondent in his proceedings in form - VSI-I and quash the surprise inspection - report dated 17.03.2014, 18.03.2014 and 19.03.2014 as being without jurisdiction and authority of law and further direct the 3rd respondent not to implement or use the inspection results against the petitioner for the purpose of assessment / re-assessment.

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.

(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 per centage 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.

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 petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

To

- 1.The Commercial Tax Officer,
Group-IV, Enforcement (South),
Chennai - 600 006.
- 2.The Joint Commissioner (CT),
(Enforcement), Coimbatore.
- 3.The Assistant Commissioner (CT),
Chithode Assessment Circle,
Chithode, Erode District.

+lcc to Mr.R.Senniappan, Advocate, S.R.No. 34399
+lcc to the Special Government Pleader(Taxes), S.R.No. 34695

W.P.No.11707 of 2014
and M.P.No.1 of 2014

PM(CO)
GN(10/08/2021)