IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.14614 & 14615 of 2014
and
M.P.Nos.2 & 2 of 2014

Tvl.Raja Steels Private Limited,
Represented by its Managing Director, M.Raja,
No.100, Avarampalayam Road, Ganapathy,
Coimbatore - 641 006.

...Petitioner in both W.Ps

Vs

1. The Assistant Commissioner (CT)
Avarampalayam Assessment Circle,
Coimbatore - 641 018.

2. The Principal Secretary / Commissioner of
Commercial Taxes,
Ezhilagam,
Chepauk, Chennai - 600 005.

... Respondents in both W.Ps

Prayer in W.P.No.14614 of 2014 : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, to call for the records on the files of the second respondent herein in VAT Cell/Roc.No./37188/2011 (Circular No.22/2011) dated 20.10.2011 and connected proceedings of the 1st respondent in TIN.No.33402220929/2008-09 dated 28.03.2014.

Prayer in W.P.No.14615 of 2014 : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, to call for the records on the files of the second respondent herein in VAT Cell/Roc.No./37188/2011 (Circular No.22/2011) dated 20.10.2011 and connected proceedings of the 1st respondent in TIN.No.33402220929/2011-12 dated 28.03.2014.

For Petitioner : Mr.R.Senniappan [in both W.Ps]

For Respondents : Mr.V.Veluchamy Government Advocate [in both W.Ps]

COMMON ORDER

The relief sought for in the present writ petition is to call for the records on the files of the second respondent in VAT Cell/Roc.No./37188/2011 (Circular No.22/2011) dated 20.10.2011 and connected proceedings of the 1st respondent in TIN.No.33402220929/2008-09 and in TIN.No.33402220929/2011-12 dated 28.03.2014.

2. The petitioner claims that in terms of Section 19(1) read with Section 19(2)(ii), the petitioner is entitled to input tax credit of the entire amount of tax paid by them on the purchases of yearn from registered dealers inside the State of Tamil Nadu.

3. It is contended that the petitioner having utilized the yarn purchased by them from registered dealers inside the State of Tamil Nadu in the manufacture of knitted garments in their factory at Tirupur, the input tax credit of the entire tax paid by the petitioner on the purchases of yarn became available to the petitioner in terms of Section 19(2)(ii) of the VAT Act 2006.

4. The learned counsel for the petitioner made a submission that the issues raised in the present writ petition is no more res-integra and a batch of writ petitions on the same line were decided by this Court on 26.11.2014 in W.P.Nos.13901 of 2013 & etc., batch. In the said batch of writ petitions, this Honourable Court elaborately considered the issues, which all are identical and therefore, the petitioner is entitled for the benefit already granted by this Court.

5. In view of the fact that the issues raised in these writ petitions are already covered in the judgment cited supra, the writ petitioner is also entitled for the same benefit. The order of this Court dated 26.11.2014 passed in W.P.Nos.13901 of 2013 & etc., batch and the relevant paragraphs of the judgment cited above are extracted hereunder:

> “60. Having held that Section 18 is not an “island” by itself but subject to restrictions and conditions laid down in Section 19 of VAT Act and having observed that there cannot be uniform yardstick in all types of manufacturing process; to ascertain as to whether there is process loss or manufacture loss or invisible loss, there is no necessity to examine as to what is stated to be a loss by the petitioner, whether it is invisible loss or whether it is destruction loss or whether it would be falling within any one of the parameters specified in Sub-Section 9 of Section 19 of VAT Act, this being a question of

fact has to be established by the dealer when called upon by the authority. Therefore, those questions are left open. It was contended by the petitioner that there is no power to review of the decision or order passed under Section 18 of VAT Act, since it is an independent provision. This Court has held that Section 18 of VAT Act is subject to the restrictions and conditions under Section 19 of VAT Act. Therefore, if in a given cases of wrong availment, Section 19 provides for reversal. Therefore, it is incorrect to state that once the refund is granted, reopening does not arise. Such interpretation is not in consonance with the scheme of the Act; more so, when what is given to the petitioner is concession or set-off.

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.

63. The Writ petitions are disposed of accordingly. No costs. Connected MPs are closed."

6. In view of the above directions granted by this Court, the writ petitions on hand stand disposed of by extending the benefit of the said judgment in favour of the petitioner. Accordingly, the case of the petitioner is directed to be reconsidered and appropriate decision is to be taken in accordance with law and in the light of the observations made in the judgment cited supra.

7. Thus, both the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT)
   Avarampalayam Assessment Circle,
   Coimbatore - 641 018.

2. The Principal Secretary / Commissioner of
   Commercial Taxes,
   Ezhilagam,
   Chepauk, Chennai - 600 005.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.34403

W.P.Nos.14614 & 14615 of 2014

PVS(CO)
RLP(06/08/2021)