BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.570 of 2019
and
W.M.P.(MD)No.459 of 2019

M/s.Krishna Timber,
Represented by its Partner Dharmesh Kumar,
132, Palam Station Road,
Goripalayam, Madurai. ... Petitioner

-Vs-

The Commercial Tax Officer,
Chokkikulam Assessment Circle,
Madurai. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records in TIN 33455002328/2014-15, dated 19.04.2018 and quash the same as arbitrary, illegal and against the Judgment of this court reported in the case of Infiniti Wholesale Limited Vs.Assistant Commissioenr (CT), Koyambedu Assessment Circle, Chennai reported in (2015) 82 VST 457 and direct the respondent to furnish the copies of the records as relied by the respondent in his notice dated 28.02.2017 and pass assessment order afresh in the light of the guidelines enunciated in the batch of writ petitions in the case of M/s.JKM Solutions Private Limited reported in 2017(99) VST 343 (Mad) including the opportunity of personal hearing within such time as may be directed by this Court.

For Petitioner : Mr.N.Sudalai Muthu
for Mr.S.Karnakar
For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2.The petitioner is a dealer registered with the respondent. The case on hand pertains to the assessment year 2014-15. After issuance of pre-revision notice and after affording an opportunity of personal hearing, the impugned order dated 19.04.2018 came to be passed fastening tax liability and penalty on the petitioner herein. The same is put to challenge in the writ petition.

3.The respondent has also filed a detailed counter affidavit. The impugned order refers to three aspects:-

(a) ITC reversal for process loss
(b) Handling and Sawing charges
(c) Annual Cross Verification

As regards ITC reversal for process loss, on the face of it, it appears that the respondent has chosen to levy tax by computing process loss at 5%. The relevant provision is Section 19(1) of TNVAT Act, 2006. It reads as follows:-

> *"**19. Input Tax Credit** :- (1) There shall be input tax credit of the amount of tax paid under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the first schedule:*
>
> *Provided that the registered dealer who claims input tax credit, shall establish that the tax due on purchase of goods has actually been paid in the manner prescribed by the registered dealer who sold such goods and that the goods have actually been delivered"*

4.The petitioner can be denied the input tax credit only if the case on hand falls under any of the aforesaid three contingencies. The petitioner is a dealer in timber. The petitioner would specifically claim that the final product was not sold for a lesser price. There has been value addition. If it is the case of the respondent that the product was sold for a lesser price compared to the purchase value, then, the petitioner can be denied the input tax credit. It is clearly not the case here.

5.The learned counsel for the petitioner draws my attention to the order dated 28.02.2020 in W.P.Nos.22304 to 22309 of 2016 (***M/s.GBR Metals Pvt.Ltd., Vs. The Assistant Commissioner (CT)***). The said decision in turn refers to an earlier decision namely ***M/s.Ran India Stell (P) Ltd., Rep. by its Managing Direction Vs. The Principal Secretary / Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and other,*** in W.P.No.3172 of 2014, dated 04.12.2019, where it was observed as under:-

> "5.In my view, the expression **"input 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."

Thus on the face of it, the levy of tax on the petitioner by computing the process loss at 5% appears to be incorrect.

6.The second ground namely handling and sawing charges also appears to be contentious. According to the respondent, the amount shown under the aforesaid head will have to be included in the sales turnover. According to the respondent, the said amount represents the petitioner's income as indicated in the profit and loss account. I must make it clear that if according to the petitioner this amount would represent his income, then, it should have been reflected in the petitioner's income tax returns and it should have been assessed accordingly. The petitioner has to necessarily make available IT returns filed by him. If in the IT returns, the said amount has been shown and has also been assessed, then, the levy of tax under the said head will have to go.

7.As regards the Annual Cross Verification, based on the mismatch report, it is well settled that the procedure laid down in J.K.M.Graphics Solutions Private Limited case (2017) 99 VST 343 (Mad) ought to have been followed. In the present case, the said procedure was not adopted.

8. Therefore, I have no hesitation to quash the order impugned in the writ petition. The Writ Petition is allowed. The matter is remitted to the file of the respondent. The respondent will issue a fresh hearing notice to the petitioner herein and after hearing the petitioner, pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Commercial Tax Officer,
Chokkikulam Assessment Circle,
Madurai.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-7175[F] dated 25/02/2021)

+1 CC to M/s.SPL GP (SR-7292[F] dated 25/02/2021)

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TP(CO)
TR(03.05.2021) 4P 4C