IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.2701 & 2703 of 2021
and W.M.P.Nos.3030 & 3033 of 2021

Tvl.Pioneer Inc
Rep.by its Proprietor
No.F.86, Anna Nagar East
Chennai 600 102. …. Petitioner in both W.Ps

-Vs-

The Assistant Commissioner (ST)
Aminjikarai Assessment Circle
Chennai 600 102. …. Respondent in both W.Ps.

Prayer in W.P.No.2701 of 2021 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in TIN/33251023498/2016-17 July 2016 dated 10.07.2020 and quash the same and direct the respondent to exercise power under Section 81 of TNVAT Act and allow the claim of input tax credit on the strength of the purchase bills issued by its vendors and other documents, objections filed by the petitioner in support of its claim and redo the assessment as per the provisions of the TNVAT Act after giving a fair and reasonable opportunity of personal hearing.

Prayer in W.P.No.2703 of 2021 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in TIN/33251023498/2016-17 February 2017 dated 10.07.2020 and quash the same and direct the respondent to exercise power under Section 81 of TNVAT Act and allow the claim of input tax credit on the strength of the purchase bills issued by its vendors and other documents, objections filed by the petitioner in support of its claim and redo the assessment as per the provisions of the TNVAT Act after giving a fair and reasonable opportunity of personal hearing.

For Petitioner : Mr.S.N.Kirubanandam

For Respondent : Mr.Richardson Wilson
Additional Government Pleader

COMMON ORDER

The prayer sought for herein is for Writ of Certiorarified Mandamus calling for the records on the file of the respondent in TIN/33251023498/2016-17 July 2016 and February 2017 respectively dated 10.07.2020 and quash the same and direct the respondent to exercise power under Section 81 of TNVAT Act and allow the claim of input tax credit on the strength of the purchase bills issued by its vendors and other documents, objections filed by the petitioner in support of its claim and redo the assessment as per the provisions of the TNVAT Act after giving a fair and reasonable opportunity of personal hearing.

2. The petitioner is a dealer under the erstwhile Tamil Nadu Value Added Tax Act (In short 'the Act').

3. Insofar as the months of July 2016 and February 2017, in order to get refund as input tax credit, the petitioner submitted Form-W electronically and claimed refund by way of input tax credit. The said claim made by the petitioner for both the months referred to above, having been considered, was rejected by the Revenue through the impugned order dated 10.07.2020 on three grounds.

3. In the first ground, it is stated that the petitioner dealer has not produced the proofs viz., vouchers or bills insofar as the input tax credit claimed for the purchases effected from four seller dealers of the petitioner. The second ground for rejection is that, insofar as the wastage of the inputs which were used for manufacturing process, 2% wastage have been admitted for which under Section 19(9) of the Act the petitioner is not entitled to claim input tax credit and the third reason for rejection is that, the petitioner is ineligible for getting refund of anything given by way of free gift as that cannot be claimed as input tax credit and therefore on that ground the petitioner is not entitled to claim input tax credit.

4. These were the three grounds under which the petitioner's claim for input tax credit has been rejected against which the present writ petitions have been filed.

5. It is the contention of the learned counsel for the petitioner that, the provisions of the Act in respect of all these three grounds have been violated and that is the reason why the petitioner has chosen to file these writ petitions instead of going before the revisional authority under Section 54 of the Act.

6. Elaborating further his arguments, the learned counsel for the petitioner would contend that, insofar as ineligible input tax credit under ground (a) the Revenue states in the order that on verification of annexures of the sellers at the other end through website, four purchases which are mentioned

have not been reported through the seller.

7. In respect of this first reason is concerned, the learned counsel would contend that, the petitioner has produced vouchers and bills and based on which the petitioner can claim input tax credit. Whether the seller dealer from whom the petitioner produced the input have paid the tax or they have shown the said sale in their return is the issue to be looked after by the Revenue and therefore by citing the said reason the claim made by the petitioner for refund on the basis of input tax credit cannot be rejected.

8. Insofar as the second ground under the heading wastage is concerned, the petitioner either has paid or ready and willing to pay the tax payable for such wastage of 2% as calculated by the Revenue, and therefore there is no challenge to that ground.

9. Insofar as the third ground viz., the sample given by way of free gift etc., cannot be claimed for the purpose of claiming input tax credit, and therefore the claim made by the petitioner is to be rejected is concerned, the learned counsel would contend that, the petitioner dealer has never given any sample by way of free sample, instead the sample being leather goods and would be costlier, have been given to the customers only by way of sale, for which amount has been paid by the customers to the petitioner and hence it cannot be treated as free gift. Accordingly, the reason stated in this regard by the Revenue is also not tenable.

10. Therefore, out of these three grounds, the learned counsel for the petitioner is persuading ground (a) and ground (c) and insofar as ground (b) is concerned, the petitioner has given up since the petitioner has either paid the tax or is ready and willing to pay the tax.

11. On the other hand, the learned Additional Government Pleader appearing for the Revenue would invite the attention of this Court with regard to the amendment made in Section 19(1) by adding the proviso under which it is provided that, not mere invoices and bills, but also the relevant documents are to be submitted to establish the goods have in fact been transported properly and in respect of which the transport documents also should have filed to the satisfaction of the Revenue. Therefore, that also has to be taken into account. He would also submit that insofar as the first reason for rejecting the claim of the petitioner that the seller details have not been shown towards sales made to the petitioner in their return is concerned, it is for the petitioner to establish that they have paid the tax and shown it in their return by the seller dealers. In the absence of the same, the petitioner's claim for input tax

credit cannot be accepted.

12. The learned Additional Government Pleader would further contend that, insofar as the rejection of claim under ground (c) that the registered dealer in respect of any goods purchased by him for sale but given away by him by way of free sample or gift or goods consumed for personal use, it is supported by Section 19(8) of the Act. Under this head also the petitioner since has claimed input tax credit only on the free sample given by him the same cannot be accepted. Therefore, these two grounds certainly would be justifiable and sustainable, he contended.

13. Insofar as ground (b) is concerned, since the petitioner's counsel himself has accepted to pay the tax, the learned Additional Government Pleader has not traversed the said ground.

14. I have considered the aforesaid submissions made by both sides and have perused the materials placed on record.

15. Insofar as ground (b) with regard to the wastage is concerned, there is no dispute that the petitioner's counsel has accepted to pay tax or has claimed that the petitioner dealer has paid the tax, it has to be verified by the Revenue.

16. Insofar as ground (a) and (c) are concerned, in respect of ground (a), the petitioner's claim has been rejected only on the ground that the said purchases have not been reported by the sellers ie., the four sellers in respect of the input viz., Orion Plastics is concerned, this Court feels that, once the petitioner has provided the invoices and bills for purchasing the same and paid the value of the input concerned, it is the look after of the seller/dealer to pay the tax and to show it in the return, only based on which the purchaser/dealer claims input tax credit. Therefore, that responsibility cannot be fully shouldered by the purchaser/dealer and therefore in this regard this Court feels that, this issue can be reconsidered by the Revenue by verifying the invoices and bills including the documents if any with regard to the transportation taken place under the proviso to Section 19(1) of the Act.

17. Insofar as ground(c) is concerned, the petitioner's counsel has vehemently contended that, not even a single sample piece has been given by way of free gift to any of the purchasers in turn from the dealer and therefore that has to be verified by the Revenue for which necessary inputs have to be supplied by the petitioner during the process of reconsideration.

18. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following order.

- That the impugned orders insofar as ground (a) and (c) are concerned, are set aside and the matter is remitted back to the respondent assessing authority for reconsideration.

- As indicated above, the reconsideration shall be made before which an opportunity of hearing shall be given to the petitioner, which shall be utilized by the petitioner by giving additional inputs like invoices, bills, documents related to transport and also documents and proof to show that the samples have been sold to the customers against which amount has been collected and therefore they were not given as gift.

- By giving such opportunity of hearing and after supply of inputs by the petitioner, the Revenue shall pass a revised order.

- Insofar as ground(b) is concerned, since the same has been accepted by the petitioner, only verification has to be made by the Revenue as to whether tax on that heading ie., wastage has been paid by the petitioner or not and accordingly that has to be sustained.

19. With the above observations, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

KST

To

The Assistant Commissioner (ST)
Aminjikarai Assessment Circle
Chennai 600 102.

+1cc to Mr.S.N.Kirubanandam, Advocate, S.R.No.25376
+1cc to the Government Pleader, S.R.No.25821

W.P.Nos.2701 & 2703 of 2021

MT(CO)
SB(27/06/2022)