IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.12.2022

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURBALE MR.JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.2611 of 2022
and
C.M.P.No.20708 of 2022
--

Alkraft Thermo Technologies Pvt. Ltd.,
35-A & B/1, Ambattur,
Industrial Estate,
Chennai-600 058,
Represented by Authorized Signatory
Mr.Sirajudeen .. Appellant

Vs.

Deputy Commissioner of GST & Central Excise,
Ambattur Division,
R-40:A1, 100 Feet Road,
Mogappair East, Chennai-600 037. .. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 05.04.2022 passed by the learned Single Judge in W.P.No.3577 of 2019 on the file of this Court.

Writ Petition No.3577 of 2019 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent in Order-in-Original No.1/2019 (DC), dated 08.01.2019 demanding CENVAT Credit of Rs.10,36,905/- along with interest under Rule 14(1)(ii) and the Penalty of

Rs.1,03,691/- under Rule 15(1) and to quash the same.

For appellant : Mr.H.S.Hredai

For respondent : Mr.A.P.Srinivas, Senior Standing Counsel

JUDGMENT

The present Writ Appeal is filed against the order dated 05.04.2022 passed by the learned Single Judge in W.P.No.3577 of 2019, dismissing the Writ Petition on the premise of alternative remedy being available by way of a statutory appeal.

2. The order of the learned Single Judge is challenged on the following premise:

It is submitted that the order-in-original denying Input Tax Credit (ITC) in respect of the removal of goods on stock transfer basis to their own Units at Jamshedpur and Uttarakhand, is contrary to the order of the Division Bench of this Court in the appellant's own case. Secondly, denial of credit of service tax on outward transport incurred for removal of goods from the appellant-factory to the premises of the customer, is arbitrary and illegal. Thirdly, the learned Judge erred in rejecting the contention of the writ petitioner-Company (appellant herein-assessee) that the impugned order in the Writ Petition suffers from violation of principles of natural justice, inasmuch as the request of the appellant for grant of personal hearing was not acceded to on the premise that the very same issue was pending consideration before this Court. Thus, the order of the respondent is bad for want of jurisdiction and also suffers from violation of the principles of natural justice, thereby falling within the exceptions to the rule of alternative remedy and thus, the learned Single Judge ought to have entertained the Writ Petition.

3. To the contrary, the learned Senior Standing Counsel appearing for the respondent submitted that the impugned order of the learned Single Judge in dismissing the Writ Petition on the ground of availability of alternative remedy, does not warrant interference.

4. Heard both sides and perused the materials on record.

5. (i) ITC on stock transfer basis to the appellant's factory:-

It is the submission of the learned counsel for the appellant-Company that insofar as the first issue is concerned, the issue now stands resolved by a decision of a Division Bench of this Court in C.M.A.Nos.1933 to 1935 of 2018, dated 20.08.2019 (M/s.Alkraft Thermotechnologies (Pvt). Limited Vs. Commissioner of Central GST and Central Excise), wherein in respect of the very same appellant herein (i.e. M/s.Alkraft Thermotechnologies (Pvt). Ltd.), it was found by the Division Bench of this Court that service tax paid by the appellant-assessee on transport of its goods by way of stock transfer from Chennai to Jamshedpur would be eligible for CENVAT Credit. The relevant portion of the above said judgment of the Division Bench of this Court, containing the conclusion, is extracted hereunder:

> "13. Therefore, we allow the Appeals of the Assessee and set aside the order of the Adjudicating Authority as well as the Tribunal and direct the Revenue Department to allow the Cenvat Credit in respect of Service Tax paid by the Assessee on transport of its goods from its Chennai Unit 1 to Jamshedpur Unit 2 in the

present case. No costs"

Insofar as the GTA (Goods Transport Agency) service tax from the appellant-assessee's factory to its Units by way of stock transfer, is concerned, we find that the order-in-original is unsustainable, insofar as it rejects the assessee's claim for ITC, inasmuch as it is contrary to the decision of the Division Bench of this Court in the assessee's own case (referred to supra).

(ii) ITC on outward transfer for removal of goods from the appellant's factory to the customer premises:

It is submitted by the learned counsel for the appellant-Company (assessee) that, insofar as the second issue is concerned, namely the eligibility of ITC on Goods Transport Agency (GTA) service engaged upto the customer's premises, is concerned, it is submitted that the above judgment of the Division Bench of this Court may have a bearing. The relevance of the above said Division Bench judgment insofar as the claim of ITC on GTA also needs to be considered, which the respondent failed to examine, thereby resulting in non-application of mind to relevant factors. In the circumstances, it appears appropriate that the appellant-assessee's claim of CENVAT credit in respect of the GTA service both in respect of stock transfer as well as upto the customer's premises, may have to be re-examined keeping in mind the above said judgment of the Division Bench of this Court in C.M.A.Nos.1933 to 1935 of 2018, dated 20.08.2019.

(iii) Non-compliance with the request of personal hearing:

There seems to be some merit in the submission of the learned counsel for the appellant-Company (writ petitioner-assessee) that their request for personal hearing was not dealt with appropriately, from a perusal of the order dated 08.01.2019 passed by the respondent.

6. In the above circumstances, we are of the view that the order of the respondent, dated 08.01.2019, warrants interference by this Court.

7. For the above reasons, the said order dated 08.01.2019 is set aside. It is open for the appellant-assessee to submit their objections and file necessary documents before the respondent-authority by placing reliance on the Division Bench decision of this Court, dated 20.08.2019 (supra) and

another decision of this Court, dated 10.06.2022 in W.P.No.1739 of 2019 (Alkraft Thermotechnologies Pvt. Ltd., Vs. Assistant Commissioner of Central GST and Central Excise and Commissioner of GST and Central Excise (Appeals-I), within a period of two weeks from the date of receipt of a copy of this order. On such objections and documents, if any filed, the respondent-authority shall consider the matter on merits and in accordance with law by taking into account the above judgments of this Court, dated 20.08.2019 and 10.06.2022. The respondent-assessing authority shall decide the matter and pass appropriate orders, within three months from the date of filing of such objections with documents by the appellant-assessee.

8. The Writ Appeal is disposed of in the above terms. There shall be no order as to costs. Consequently, Civil Miscellaneous Petition is closed.

(S.V.N., J) (M.S.Q., J)
22.12.2022

Index: Yes/no
Speaking Order: Yes/no
Neutral Citation case: Yes/no
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To

Deputy Commissioner of GST & Central Excise,
Ambattur Division,
R-40:A1, 100 Feet Road,
Mogappair East,
Chennai-600 037.

S.VAIDYANATHAN, J,

and

MOHAMMED SHAFFIQ, J.,

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