BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.21639 of 2022
and
W.M.P(MD)No.15774 of 2018

Asian Fabricx Private Limited,
Represented by its Director cum Chairman,
N.R.Venkatachalam ... Petitioner

Vs.

1.The State Tax Officer,
Karur-III Assessment Circle,
Erstwhile Commercial Tax Officer,
Karur (East) Circle,
Karur-639 001.

2.The Assistant Commissioner,
Karur-4 Circle,
Karur-639 001. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records leading to the issuance of rejection order 1 in TIN. 33523765491/2014-2015, dated 26.07.2021 by the 1st Respondent herein and quash the same, and direct the Respondents herein to consider the rectification application filed under Section 84 of the TNVAT Act and dispose of the same in accordance with law and in view of the law laid down by this Court and the Hon'ble Principal Bench of this court.

For Petitioner : Mr.J.Athithya Reddy
For Respondents : Mr.P.Subbaraj
Special Government Pleader

ORDER

This writ petition has been filed challenging the rejection of the rectification petition filed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006.

2. Mr.P.Subbaraj, learned Special Government Pleader takes notice for the Respondents

3. The Petitioner herein is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 vide TIN33523765491. While filing monthly returns in Form-I, under Section 22(1) of the Tamil Nadu Value Added Tax, 2006, the dealers reversed Input Tax Credit of 5% towards manufacturing loss under Section 19(9)(iii) of the Tamil Nadu Value Added Tax Act, 2006 for the assessment year 2014-2015. The dealers had subsequently filed an application for rectification under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 stating that reversal of 5% towards manufacturing loss was by mistake as the actual loss was also 0.5%. Reliance was sought to be placed on the decision of this Court in the case of **Interfit Techno Products Limited Vs The Principal Secretary, Commissioner of Commercial Taxes** (W.P.Nos.

13901, 30852 to 30880 of 2013) reported in **(2015) 81 VST 389 (Mad)**, wherein, certain guidelines were issued to arrive at the invisible loss.

4. It is submitted that subsequent to the above decision, which is the subject matter before the Division Bench of this Court, various orders were passed by this Court, wherein, it has been held that the question of invisible loss and denial of credit may not arise. The rectification petition was filed *inter alia* submitting that Section 19(9)(iii) of the Tamil Nadu Value Added Tax would not get attracted, where, some quantity of input tax credit used in the manufacturing process loses its identity or consumed an ceases to exist in physical form as a result of being used in manufacture. It was thus submitted that invoking Section 19(9)(iii) of the Tamil Nadu Value Added Tax Act suffers from error apparent on the face of the record inasmuch as it is contrary to the binding decisions of this Court. The Petitioner submitted that the question raised has not been dealt with while rejecting the rectification petition. Instead the Respondents have proceeded to reject the rectification petition alleging that the Petitioner was not maintaining Stock Register, which according to the Petitioner is wholly irrelevant to decide the rectification petition. However, it is submitted by the learned counsel for the Petitioner that if opportunity is granted, the Petitioner will produce the relevant documentary evidence.

5. It is submitted by the learned Special Government Pleader for the Respondents that though the Petitioner was called upon to produce the books of account in the form of Stock Register and other relevant documents, the same was not produced. It is also submitted by the learned Special Government Pleader that if the Petitioner produces the relevant documentary evidence, the same would also be considered and rectification order would be passed.

6. In view of the above submission, this Court is of the view that the impugned order is liable to be set aside. It is open to the Petitioner to approach the Respondents along with the relevant documentary evidence and also make his submission in support of the claim that invisible loss as a result/part of manufacturing process may not be a reason for denial of input tax credit. On receipt of the production of the documents, if any, the Assessing Authority shall pass orders in accordance with law. The above exercise shall be carried out by the Respondents within a period of eight weeks from the date of receipt of copy of this order.

7. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

14.09.2022

Index : Yes / No
Internet : Yes/ No
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To

1.The State Tax Officer,
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Erstwhile Commercial Tax Officer,
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Karur-639 001.

2.The Assistant Commissioner,
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MOHAMMED SHAFFIQ, J.

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