



W.A.Nos.1094 & 1095 of 2015 and etc., batch

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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Reserved on : 09.01.2023

Pronounced on : 28.02.2023

CORAM

**THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN  
AND  
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.A.Nos.1094, 1095, 1423, 1435, 1448, 1477, 1505, 1506, 1517, 1527 of  
2015, 244 of 2016, 721, 722, 723, 724, 725 of 2018 and  
W.P.Nos.734,735,736,737,738 of 2016, 9562 of 2018, 11632 of 2019, 966,  
971, 968, 970, 2478 of 2020 and  
C.M.P. Nos.6949 , 6950 , 6951 , 6952, 6953 , 6954 of 2018 and  
W.M.P.Nos.550, 551, 552, 553, 554 of 2016, 11867 of 2019, 1184, 1185,  
1187, 1188, 2873 of 2020**

**W.A.No.1094 of 2015:**

Eastman Exports Global Clothing (P) Ltd.  
(Rep. by its Chairman & Managing Director,  
N.Chandran)  
D.No.5/591 Sri Lakshmi Nagar,  
Pitchampalayam Pudur,  
Tirupur.

... Appellant

Vs.

1.The Assistant Commissioner (CT),  
Tirupur (North) Circle,Tirupur.

2.The Commercial Tax Officer, Special Circle-I,Tirupur.

3.The Principal Secretary  
Commissioner of Commercial Taxes  
Ezhilagam, Chepauk, Chennai 600 005.

...Respondents

**PRAYER:** Writ Appeal filed under Clause 15 of Letters Patent to allow this writ appeal by setting aside the judgment dated 26.11.2014 passed in W.P.No.24828 of 2012.



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| <b>CASE NUMBERS</b>                                      | <b>COUNSEL FOR APPELLANT(S)/PETITIONER(S)</b> | <b>COUNSEL FOR RESPONDENT(S)</b>                         |
|----------------------------------------------------------|-----------------------------------------------|----------------------------------------------------------|
| W.A.Nos.1094, 1095 of 2015 and W.P.No.2478 of 2020       | Mr.N.Sriprakash                               | Mr.Haja Nazirudeen<br>Additional Advocate General        |
| W.A.No.1527 of 2015                                      | Ms.R.Hemalatha                                | Assisted by                                              |
| W.P.No.11632 of 2019                                     | Mr.Adithya Reddy                              | Mr.M.Venkateswaran<br>Special Government Pleader (taxes) |
| W.A.Nos.721,722,723, 724, 725 of 2018                    | Ms.Hema Muralikrishnan                        | Mr.V.Prashanth Kiran<br>Government Advocate (taxes)      |
| W.P.Nos.734,735,736,737, 738 of 2016                     | Mr.K.Jayachandran                             | Mr.P.Hari Babu<br>Government Advocate in all cases       |
| W.P.No.9562 of 2018                                      | Mr.R.Senniappan                               |                                                          |
| W.P.Nos.966, 968, 970, 971 of 2020                       | Mr. N.Inbarajan                               |                                                          |
| W.A.No.244 of 2016                                       | Mr.N.Prasad                                   |                                                          |
| W.A.Nos.1423, 1435, 1448, 1477, 1505, 1506, 1517 of 2015 | Mr.N.Murali                                   |                                                          |

### **COMMON JUDGMENT**

#### **MOHAMMED SHAFFIQ, J.**

The common question that arises for consideration in this batch of Writ Appeals/Petitions revolves around the construction/interplay of Section 19(2)(ii) vis-a-vis Section 19 (9) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as “the TNVAT Act”). Though the issue/question that arises for consideration is common in this batch of Writ Appeals/petitions, the facts and nature of products are different. However, that in our view it would not have any bearing on the issue which needs to be resolved.

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## 2. History of the litigation:

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This is the 2nd round of litigation. The learned Single Judge had recorded / traced the history of the litigation leading up to the writ petitions. The learned Judge has *inter-alia* recorded the following while dealing with the background to the present litigation:

a. A representation was made by the Textile Exporters Association to the Joint Commissioner Taxes Enforcement as well as Joint Commissioner of Commercial Taxes, Coimbatore, in view of the fact that there was a slew of proceedings initiated whereby input tax credit on the portion treated as manufacturing/invisible loss was directed to be reversed.

b. The Principle Secretary / Commissioner of Commercial Taxes issued a circular dated 20.10.2011 instructing the assessing authorities that Input Tax availed on raw materials to the extent of the wastage was to be treated as manufacturing / invisible loss and reversed. In the event of refund having been granted the excess refunds ought to be deducted while granting subsequent refunds.

c. The Textile Exporters Association filed a Writ Petition in W.P.No.28114 of 2011 to prohibit the revenue from reversing or disallowing the claim on input tax credit relating to manufacturing/invisible loss in respect of the members of the Association. The Writ Petition was dismissed vide



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order dated 14.12.2011 on the ground that the Association has no locus standi.

d. The matter was carried by way of appeal in W.A.No.966 of 2012, by the Association which was dismissed by the Division Bench. However, it was observed that it is open to the Association to approach the appropriate authority as and when required and conduct demonstration with regard to manufacturing/invisible loss.

e. Thereafter, individual notices came to be issued on some of the Petitioners/Appellants proposing to reverse the input tax credit availed towards alleged manufacturing/invisible loss at fixed percentages.

f. The Petitioners / Appellants submitted their objections. After about two years the Respondent proceeded with assessment. Some of the Writ Petitioners challenged the notices while a few challenged the assessment proceedings directing the petitioners/ appellants to reverse the Input Tax Credit at fixed rates as representing manufacturing/invisible loss. Writ Petitions were filed challenging the Circular dated 20.10.2011 as well.

g. As stated above, the goods involved in this batch are not the same. However, in all the cases proceedings were initiated on the premise there was manufacturing/invisible loss attracting Section 19 (9) of the TNVAT Act, warranting reversal of credit.



### **3. Order of the learned Single Judge:**

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In this batch of writ petitions before the learned Single Judge there were challenges to the proceedings proposing / directing reversal of Input Tax Credit on account of manufacturing / invisible loss. Apart therefrom there was also a challenge to the Circular dated 20.10.2011 by which instructions were issued stating that wastage at all levels must be considered taking into account the nature of commodity and that the credit was to be reversed in respect of manufacturing/invisible loss in terms of Section 19 (9) of the TNVAT Act. The following issues were framed:

*" (1) Whether the impugned Circular No.22/2011 dated 20.10.2011 is bad in law for want of jurisdiction to issue the same under the provisions of the TNVAT Act and the effect of such Circular on the assessments made by the Assessing Officer?*

*(2) Whether Section 18 of the TNVAT Act is a Scheme by itself or whether the benefit to a dealer under Section 18 is subject to the conditions prescribed under Section 19 more particularly Section 19(9) of the TNVAT Act ?*

*(3) Whether in the given facts and circumstances would it be sufficient for a dealer who claims refund under Section 18(2) of the TNVAT Act of the input tax paid on the purchase of the goods, to show that those goods are used in the manufacture and nothing more ? Whether the Assessing Authority should embark upon a fact finding exercise to ascertain the quantum of loss, if any?*

*(4) If it is held that the relief under Section 18(2) of TNVAT Act is subject to Section 19 of TNVAT Act, whether the circumstances mentioned in Section 19(9)(i),(ii) and (iii) would cover manufacturing loss ?*

*(5) Whether the respondent assessing authorities were justified in adopting a uniform percentage as invisible loss and calling upon the dealer to reverse the Input Tax Credit availed to that extent?*



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*there is no machinery under the TNVAT Act to reverse the refund granted pursuant to an order passed on an application filed by the dealer in Form W under Rule 11(2) of the TNVAT Rules ?”*

The learned Judge proceeded to answer the issues as under:

*"63. 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 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 percentage 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.*



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*(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."*

It is relevant to note that the learned Judge had recorded that the relief sought for in all the Writ Petitions was more or less identical and the grounds raised are common. That the revenue has advanced common arguments resisting the contention of the petitioner / assessee. The batch of writ petitions was disposed by the learned Judge vide his order dated 26.11.2014. It is this order of the learned Judge which is the subject matter of challenge in these Writ Appeals. It must be noted that it was consented by all parties concerned that the common question that arises for consideration is whether manufacturing / invisible loss of goods used in manufacture would attract Section 19 (9) of the TNVAT Act, thereby warranting reversal of credit. It was also consented/submitted that the facts in Writ Appeal Nos.1094 and 1095 of 2015 can be taken as the lead matter and the facts in the said appeals can be considered as being typical for resolving the controversy. It was made clear that we do not propose to examine the facts and we only intend to resolve the legal issues raised.

The following table would give a broad overview of the activity and



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also the nature of inputs used in the manufacturing or processing of goods in

some of the writ petitions/appeals, forming part of the present batch.

| S.No. | Writ Petition                                                             | Impugned Order                                                                    | Nature of Work                                                                                                           |
|-------|---------------------------------------------------------------------------|-----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| 1.    | W.A.Nos.1094 & 1095 of 2015<br>Eastman Exports Global                     | Circular No.22/2011<br>VAT Cell/<br>ROC.No.37188/2011                             | Business of manufacturing and selling Hosiery Garments                                                                   |
| 2.    | W.P.Nos. 966, 968, 970,971 of 2020<br>Chinnamal Timber                    | TIN/33960920142<br>for 2 AY                                                       | Manufacturer of Timber                                                                                                   |
| 3.    | WP Nos 734 to 738 of 2016<br><br>M/S.Goyall Ispat Ltd.                    | TIN/33100040437<br>for 5 AYs                                                      | Manufacturer and dealer in iron and steel products                                                                       |
| 4.    | WP 9562/2018<br><br>M/S.Ellak Chem Industries                             | TIN No.<br>33563341288 of<br>2013-2014                                            | Chemical Industry<br>purchased raw materials<br>Brytes, pet coke, palm shell<br>power from outside the state<br>dealers. |
| 5.    | WA 1423, 1435,1448, 1477, 1505, 1506, 1517<br>of 2015<br>Sanmar Foundries | TIN / 33960920142<br>and Circular<br>No.22/2011<br>VAT Cell/<br>ROC.No.37188/2011 | Petitioner purchase Iron and Steel scrap for manufacturing of Steel Castings                                             |
| 6.    | W.A.No.721, 722, 723, 724 , 725 of 2018<br>OPG Metals Pvt. Ltd.           | Circular No.22/2011<br>VAT Cell/<br>ROC.No.37188/2011                             | Manufacturer of billets / ingots                                                                                         |
| 7.    | W.P.No.2478 of 2020                                                       | TIN No.33792205728                                                                | Timber                                                                                                                   |
| 8.    | W.A.No.1527 of 2015<br>Kanish Steel industries                            | TIN No.33670740706                                                                | Manufacturer of TMT Bars, structural steels, Channels                                                                    |
| 9.    | W.P.No.11632 of 2019<br>TVL Shree Fateh Granites                          | TIN No.33763364264                                                                | Manufacturer of granite                                                                                                  |
| 10.   | W.A.No.244 of 2016<br>Hi-Tech Mineral industries                          | TIN No.33613244018                                                                | Manufacturer of Iron and Steel                                                                                           |

#### **4. Facts in W.A.Nos.1094 and 1095 of 2015:**

<https://www.mhc.tn.gov.in/judis> The appellant was engaged in the business of manufacture and

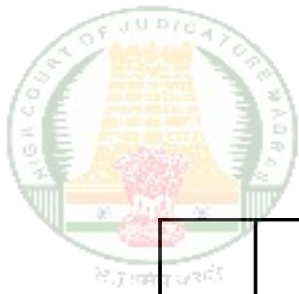


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sales of Hosiery Garments, inside the State of Tamil Nadu. For the purpose of manufacturing such garments, the appellant effected purchase of yarns among other inputs from registered dealers, inside the State of Tamil Nadu, after paying appropriate tax. The yarn purchased was converted into fabric and the fabric was further processed and garments were manufactured by the appellant and exported. The above facts are not in dispute. It is also not in dispute that the process of conversion of yarn into fabric and fabric into garments would necessarily involve loss of loose fibers. This was treated as invisible/ manufacturing loss and the respondents proceeded to invoke Section 19(9) of the TNVAT Act, and directed reversal of credit. Apart from the above which is common in all the matters in this batch, Section 18 of the TNVAT Act an additional aspect/ feature is also involved in this Writ Appeal. To give an idea of the manner in which Section 19 (9) of the TNVAT Act has been applied / invoked by the assessing authorities while dealing with manufacturing/invisible loss it may be relevant to extract illustratively the finding in some of the orders of assessment forming part of the present batch:

| S.No. | Case Nos.           | Finding by assessing officer                                                                                                                    |
|-------|---------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.    | W.A.No.1477 of 2015 | As the dealers are being a manufacturer, there is every chance of manufacturing loss at some intermediary stage of manufacture of new products. |

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|    |                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|----|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                           | Regarding the proposal for reversal of ITC in respect of manufacturing loss, the dealers have adduced no additional grounds other than those already placed by them at the time of their accounts for the year. Those contentions have been dealt with in the proposal list.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 2. | W.A.No.244 of 2016        | The M.S.Scrap, M.S.ingots and other materials used are lost to some extent while in the process of manufacturing of end products due to heating and other process. This fact cannot be denied by the dealers. The quantity of loss at 10% seems to be high and therefore the manufacturing loss at 10% originally adopted is modified to 5 %.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 3. | W.P.No.734 to 738 of 2016 | Their contention was carefully examined. Their entire argument is on the focus that the loss of input, occurring during the course of manufacture is not subject to the provisions of Section 19(9), but it would be applicable only in the case of destruction of input, during the course of manufacturing. Their contention is not correct. In the said section, it has been mentioned as "during the course of manufacturing", which clearly means the happenings caused by the process of manufacturing. When they have admitted that there is loss of input, on their process of manufacturing, their contention that it would not be subject matter of Section 19(9) is not correct. Moreover, the loss of input, in the process of manufacturing, is not visible in the finished products and not playing any roll in yielding the value addition. |

#### **5. Issues:**

Against the above background, two questions arise for consideration:

a. Whether the validity of the Circular being non-statutory needs to

be tested/examined.

b. Whether inputs used in manufacture and necessary for the end

product would constitute wastage or manufacturing/invisible loss though such



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loss is admittedly inevitable/unavoidable/inherent part of manufacturing process, on the ground that the inputs are not contained in the end product thereby attracting Section 19(9) of the TNVAT Act, warranting reversal of credit.

#### **6. Case of the Assessee/Appellants:**

On behalf of the appellants, it was submitted by Mr. N. Sri Prakash and Mrs. Hemalatha, N.Murali as under:

a. That yarn, iron and steel, timber, chemicals etc., purchased and used by the Appellants/Petitioners in the manufacture or processing of goods are admittedly inputs in terms of Section 2 (23) of the TNVAT Act. It is not in dispute that the activity carried on by the appellants would constitute manufacture. The appellants are thereby entitled to credit in terms of Section 19(2)(ii) of the TNVAT Act.

b. Admittedly, loss of input is an inevitable/necessary part of the manufacturing process undertaken by the appellants. In other words, without manufacturing/invisible loss the desired end product cannot be manufactured. The revenue has erred in treating the manufacturing / invisible loss, which is admittedly inevitable/inherent/necessary part of manufacture, as having been destroyed and thereby, invoking Section 19 (9) of the TNVAT Act and



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proposing/directing reversal of credit on the inputs constituting manufacturing/invisible loss.

c. Revenue while admitting that manufacturing/invisible loss is inevitable part of manufacturing process has erred in proceeding to examine whether the input is part of the end product to determine the extent of entitlement to Input Tax Credit.

d. The Revenue has erred in assuming / finding that absence of the input in the end product as constituting manufacturing/invisible loss warranting reversal of credit under Section 19 (9) of the TNVAT Act.

e. While examining the claim of credit on inputs in terms of Section 19 (2) (ii) of the TNVAT Act, the enquiry ought to be whether the inputs are used in the manufacture or processing of goods in the State and not whether they form part of or contained in the end product.

f. The legality / correctness of the circular issued by the Commissioner insofar as it provides for reversal of Input Tax Credit on manufacturing/invisible loss irrespective of whether the circular is statutory or non-statutory circular ought to be examined. For irrespective of whether the circular is statutory or non-statutory the same having been issued by the Commissioner who is the highest officer in the hierarchy would influence the quasi-judicial function of assessment by subordinate authorities.

<https://www.mhc.tn.gov.in/judis> g. That the provisions of a statute ought to be construed



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harmoniously and avoid conflict with each other. The interpretation/construction placed by the revenue would result in conflict between Section 19(2)(ii) and 19(9) of the TNVAT Act, and thus ought to be avoided.

### **7. The case of the Revenue:**

The learned Additional Advocate General representing the Revenue would submit as under:

a. That the appellants having been in trade ought to be imputed with knowledge of the manufacturing loss.

b. Manufacturing loss is inevitable/necessary and thus the portion of input attributable to the manufacturing loss ought to be reversed.

c. The extent of the assessee/dealers entitlement to credit ought to be tested on the basis of the existence / availability of inputs in the end product.

d. The expression "destroyed" employed in Section 19(9) of the TNVAT Act, would take within its fold manufacturing / invisible loss.

e. The provisions of a taxing statute must not be read in isolation but as a whole. Reliance was placed on the judgments of the Hon'ble Supreme Court in the case of *Kailash Chandra*, reported in (2002) 2 SCC 678 and

*ALD Automotive* reported in (2019) 13 SCC 225.



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f. Input Tax Credit is in the nature of benefit / concession, the same

would be subject to any restriction / limitation imposed by the statute. In this regard reliance was placed on the judgements of the Hon'ble Supreme Court in the cases of Godrej and Boyce (1992) 3 SCC 624 and Jayam & Co., (2016) 15 SCC 125.

## 8. DISCUSSION:

Before proceeding further, to resolve the legality/validity of the impugned circular it may be necessary to extract the relevant portions of the Circular dated 20.10.2011, which reads as under:

*"13) ITC reversal on wastage u/s 19(9) of The TNVAT ACT, 2006:-*

*In a manufacturing concern, wastage of raw materials, finished goods or intermediary products is inevitable. Further, the tax paid on them would have already claimed and availed as ITC at the stage of purchase itself. Therefore, reversal of ITC has to be made to that extent under Sec. 19(9) of the TNVAT Act, 2006. If the dealers maintain such accounts, input tax credit can be reversed accordingly on that basis.*

*In cases where no such account is maintained for wastages, ITC to be reversed has to be estimated based on the sale of waste as per accounts. While making such estimation the sale value of wastage should not be taken for reversal of ITC. On the other hand, the related value of raw material or finished goods or intermediary goods at the time of purchases must be taken into consideration for working out the ITC to be reversed. If no such sale details of wastage is available in the accounts, wastage in all level have to be determined considering the nature of commodity to estimate the ITC on wastage In some process like yarn manufacturing ITC for invisible loss of cotton also should be estimated.*

*Therefore, the Assessing Officer and the Refund issuing authority should be cautious in arriving at the quantum of wastage according to the prevailing trend and the resultant ITC due for reversal. Reversal of Input tax credit has to be carefully determined by the Assessing Authorities as mentioned above without any omission. The casual way of looking at things like this should be avoided."*



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*(emphasis supplied)*

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9. The learned Judge has rejected the challenge to the above Circular holding that the question of quashing the impugned circular is unnecessary in the light of the stand taken by the Respondents that the impugned circular is not statutory and at best could serve as guideline by adding a note of caution that the circular would not be blindly followed by the Assessing officer.

10. We would think that once the Commissioner has expressed his opinion on a question, though technically it may be open for an assessee to present/submit before the assessing officer a different perspective/contrary view, the same would be a futile exercise and an empty formality, for the officer would be influenced rather feel bound by the view expressed by the Commissioner. That the Circular is statutory or non-statutory in nature would not make a material difference insofar as its impact on the independent discharge of quasi-judicial functions by the assessing officer. Once, the highest office has expressed its view on a particular aspect it would be puerile to expect the assessing officer to apply his mind in an independent and objective manner which is fundamental for a valid exercise of quasi judicial function. It is for this reason that Courts have repeatedly held that in such circumstances



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the validity of the Circular needs to be examined/tested.<sup>1</sup>

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We are unable to persuade ourselves to think that the correctness of the above Circular need not be examined in view of its non-statutory character but instead would think that the correctness needs to be examined lest the entire assessment functions would be reduced to a mere ritual and an empty formality. Having said that we do not intend to deal with the correctness of the Circular independently as the answer to the second question would resolve the issue relating to the correctness of the circular in the present batch of cases.

**Subsequent Decisions under Section 19(9) of the TNVAT Act relating to manufacturing / invisible loss:-**

11. It may be relevant to note that subsequent to the impugned order of the learned Single Judge, which is the subject matter of challenge before this Court, there have been at least a couple of occasions when this Court has made a departure from the view expressed by the learned Single Judge in the impugned order insofar as reversal of credit on the ground of manufacturing/invisible loss. The relevant portions of the judgments are extracted hereunder:

**a. *Ran India Steels (P) Ltd. v. Commercial Tax Officer,*  
2019 SCC OnLine Mad 15929:**

<sup>1</sup> Filterco v. CST, (1986) 2 SCC 103 - Tvl. Pizzeria Fast Foods Restaurant (Madras) Pvt. Ltd. v. Commissioner of Commercial Taxes, 2005 (140) STC 97 Mad  
<https://www.mhc.tn.gov.in/judis>



5. In my view, the expression "inputs 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".

(emphasis supplied)

b. The above view was reiterated by this Court in *ARS Steels & Alloys International Pvt Ltd v. The State Tax Officer*, (W.P. Nos.2885 of 2020 etc., batch)

*"11. The situations as set out above in clause (h) indicate loss of inputs that are quantifiable, and involve external factors or compulsions. A loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself.*

*12. In the case of *Rupa & Co. Ltd. V. Cestat, Chennai* (2015 (324) ELT 295), a Division Bench of this Court decided a question of law in regard to the entitlement to Cenvat credit involving the measure of inputs used in the manufacturing process, in terms of the provisions of Section 9A and 2(g) of the CENVAT Credit Rules, 2002.*

*13. In that case, a certain amount of input had been utilised by the assessee, whereas the input in the finished product was marginally less. The department proceeded to reverse the cenvat credit on the difference between the original quantity of input and the input in the finished product.*

*14. The Bench, noticing at paragraph 13 that some amount of consumption of the input was inevitable in the manufacturing process, held that cenvat credit should be granted on the original amount of input used notwithstanding that the entire amount of input would not figure in the finished product. They state at paragraph 13 as follows:*

*13. To say that what is contained in finished product is only a quantity of all the inputs of the same weight as that of the finished product would presuppose that all manufacturing processes would never have an inherent loss in the process of manufacture. The expression 'inputs of such*



finished product', 'contained in finished products' cannot be looked at theoretically with its semantics. It has to be understood in the context of what a manufacturing process is. If there is no dispute about the fact that every manufacturing process would automatically result in some kind of a loss such as evaporation, creation of by-products, etc., the total quantity of inputs that went into the making of the finished product represents the inputs of such products in entirety.'

*15. In the light of the discussion as above, I am of the view that the reversal of ITC involving Section 17(5)(h) by the revenue, in cases of loss by consumption of input which is inherent to manufacturing loss is misconceived, as such loss is not contemplated or covered by the situations adumbrated under Section 17(5)(h)."*

*(emphasis supplied)*

We find that different views have been expressed on the above issue by this Court. Therefore there is a need to clarify with certitude the position on the issue raised.

## 12. Scope and ambit of Section 19(2)(ii) vis -a -vis Section 19 (9) of the TNVAT Act:

### 12.1. Scope of Section 19 (2) (ii) of TNVAT Act :

To appreciate the scope of Section 19 (2) (ii) of TNVAT Act it may be necessary to examine and analyse the following provisions of TNVAT Act:

*2 (23) "input" means any goods including capital goods purchased by a dealer in the course of his business*

*2 (24) "input tax" means the tax paid under this Act in the manner prescribed] by a registered dealer to another registered dealer on the purchase of goods including capital goods in the course of his business;*

### **19. Input tax credit**



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*(1) There shall be input tax credit of the amount of tax paid Omitted[or Payable] under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule : ...*

*(2) Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of –*

*(i) re-sale by him within the State; or*

*(ii) use as input in manufacturing or processing of goods in the State; or*

*(iii) use as containers, labels and other materials for packing of goods in the State; or*

*(iv) use as capital goods in the manufacture of taxable goods.*

*(v) sale in the course of inter-State trade or commerce falling under sub-section (1) and (2) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956)*

*(vi) Agency transactions by the principal within the State in the manner as may be prescribed*

*(emphasis supplied)*

Input Tax Credit is in the nature of a concession and is the pivot/axis around which the VAT Scheme revolves. The State legislature has under Section 19 (2) of the TNVAT Act identified circumstances under which the benefit of Input Tax Credit is granted. Importantly, Section 19(2) (ii) of the TNVAT Act provides that Input Tax Credit shall be allowed for purchase of goods made within the State from a registered dealer for use as input in manufacturing or processing of goods in the State.

12.2. Thus, any goods which qualifies as an “input” under Section 2(23) of the TNVAT Act and used in manufacture or processing of goods shall be entitled to Input Tax Credit. The object behind granting the benefit of

Input Tax Credit in terms of Section 19 (2) (ii) of the TNVAT Act, is with a



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view to promote manufacturing activity within the State. While construing the

scope of 19 (2) (ii) of the TNVAT Act it may be relevant rather necessary to

take note of the following aspects:

i. In view of the definition of "*manufacture*" under Section 2(27) of the TNVAT Act, the same would have to be applied while considering the expression "*manufacturing of goods in the State*" employed in Section 19 (2) (ii) of TNVAT Act.

ii. Raw material has not been defined under the TNVAT Act. The ordinary common sense understanding of it is that, it is something from which another new or distinct commodity can be produced. Importantly, to constitute raw material it is not necessary that it must be contained in the end product. An ingredient which retains its identity in the end product is as much raw material as that which is consumed in manufacture.

iii. The enquiry as to whether the goods are contained in the end product is wholly irrelevant to determine whether the input is a raw material.

A fortiori when entitlement to credit under Section 19(2)(ii) of the TNVAT Act, is founded on the "input being used in the manufacture or processing of goods in the State".

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iv. The enquiry to determine as to whether any goods are used in manufacture is not to find whether it forms part of the end product but to test its indispensability in the emergence of the end product.

v. The quantitative tally between the raw material used and its place in end product manufactured is foreign to the concept of manufacture. The above requirement is contrary to technical/practical/commercial expediency involved in the activity of manufacture.

vi. While construing the expression “use in manufacture” courts have leaned towards a liberal construction and had applied the test of commercial inexpediency i.e., though manufacture may be theoretically possible but commercially inexpedient in the absence of a particular process, the said process and the goods involved in the said process would qualify as “use in manufacturing” or “processing of goods”.

Now, with the scope, ambit and object of Section 19 (2) (ii) of TNVAT Act having been examined it leaves no room for doubt that if any inputs are used in manufacture the fact that the input so used may not form part of end product would have no bearing in determining the dealers entitlement to input tax credit in terms of Section 19 (2) (ii) of the TNVAT Act.

### 13. Scope and purport of Section 19(9) of the TNVAT Act:



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We shall now proceed to examine the scope and purport of Section

19(9) of the TNVAT Act, which is sought to be relied upon by the revenue to deny the claim of Input Tax Credit under Section 19(2)(ii) of the TNVAT Act with regard to alleged manufacturing/invisible loss. Section 19(9) of the TNVAT Act reads as under:

***“19. Input tax credit***

*(9) No input tax credit shall be available to a registered dealer for tax paid [or Payable] at the time of purchase of goods, if such-*

*(i) goods are not sold because of any theft, loss or destruction, for any reason, including natural calamity. If a dealer has already availed input tax credit against purchase of such goods, there shall be reversal of tax credit; or*

*(ii) inputs destroyed in fire accident or lost while in storage even before use in the manufacture of final products; or*

*(iii) inputs damaged in transit or destroyed at some intermediary stage of manufacture.”*

A close reading of Section 19(9) of the TNVAT Act would reveal the following:

i. Section 19(9) of the TNVAT Act sets out certain circumstances under which Input Tax Credit shall not be available to a registered dealer.

ii. Section 19(9)(i) of the TNVAT Act is not concerned with inputs used in manufacture but relates to inputs which are intended to be traded as

would be evident from the expression “*goods are not sold*” thus it deals with a claim to input tax credit under Section 19(2)(i) of the TNVAT Act which covers inputs meant for the purpose of resale in the State.



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iii. Section 19(9)(ii) of the TNVAT Act deals with inputs intended to be used in manufacture but destroyed or lost even before use in manufacture of final products, this was meant to cover instances where the inputs are not available even being before the commencement of manufacturing process. In other words, the inputs are destroyed or lost even before it enters the manufacturing stream.

iv. Section 19(9)(iii) of the TNVAT Act refers to inputs damaged in transit or destroyed at some intermediary stage of manufacture.

14. The expressions “*damaged*” and “*destroyed*” in Section 19(9)(iii) of the TNVAT Act used to deny Input Tax Credit, must be understood to have been employed by the legislature in contradistinction to the expressions “*use in manufacturing or processing of goods*” employed in Section 19 (2) (ii) of TNVAT Act while allowing a dealer to claim Input Tax Credit. While the expression “use” in Section 19(2)(ii) of the TNVAT Act qualifies “*manufacturing or processing of goods*”, the expressions “*damaged*” and “*destroyed*” employed in Section 19(9) of the TNVAT Act are not used with reference to manufacture or processing of goods. It may be relevant to refer to the dictionary meaning of the expressions “*use*”, “*damaged*” and “*destroyed*”, employed in Section 19 (2) (ii) and 19(9) (iii) of the TNVAT Act to appreciate its scope.



"Use" as defined in Black Laws dictionary, 10th Edition by Bryan A. Garner–

Use:

*To employ for the accomplishment of a purpose; to avail oneself of*  
*To put into practice or employ habitually or as a usual way of doing something;*  
*To follow as a regular custom to avoid*  
*To do something customarily or habitually;*  
*To be wont or accustome*

"Use" as defined in Ramanatha Iyer's Advanced Law Lexicon, 5th Edition

*The Random House Dictionary defines the word "use" as 'to employ for some purpose' 'put into service' 'making use of'.*

*In Oxford Dictionary, the word 'use' has been defined as 'using' 'employment' 'application to a purpose' 'availability' 'utility' 'purpose for which things can be used'*

*The expression "use" in clause 7 suggests something done positively, for eg., utilisation or disposal. Mere non-use is not included in the word 'use'. State of UP vs. Rangaya Sharma, AIR 1966 SC 78, 80 (Iron and Steel (Control) Order (1958), cl.7*

*The word 'use' means the employment or using a particular article or thing for profitable purpose in relation to a business or trade*

"Damage" as defined in various dictionary in the following manner:

Black's Law Dictionary

*Loss, injury, or deterioration, caused by the negligence, design, or accident of one person to another, in respect of the latter's person or property. The word is to be distinguished from its plural,*

Merriam-webster:

*loss or harm resulting from injury to person, property, or reputation*

Collins



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*To damage an object means to break it, spoil it physically, or stop it from working properly.*

*To damage something means to cause it to become less good, pleasant, or successful.*

*Damage is physical harm that is caused to an object.*

*Damage consists of the unpleasant effects that something has on a person, situation, or type of activity.*

*"Destroy" has defined in the following manner:*

*Black's Law Dictionary*

*As used in policies of insurance, leases, and in maritime law, and under various statutes, this term is often applied to an act which renders the subject useless for its intended purpose, though it does not literally demolish or annihilate it.*

*Merriam Webster:*

*to ruin the structure, organic existence, or condition of  
to ruin as if by tearing to shreds*

*Collins*

*To destroy something means to cause so much damage to it that it is completely ruined or does not exist any more.*

*Britannica*

*to cause (something) to end or no longer exist : to cause the destruction of (something) to damage (something) so badly that it cannot be repaired*

From the above it would be clear that the expression “damaged” is used to convey loss or deterioration in value or an act which makes the product less efficient, similarly the expression “destroyed” is used to convey



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an act that renders the subject useless for its intended purpose. Manufacture

is a process or series of process directed towards bringing into existence a commercially distinct commodity. Thus the expressions “*use in manufacture or processing of goods*”, employed in Section 19 (2) (ii) of TNVAT Act is meant to convey a positive act or an act performed towards / in the direction of achieving the intended purpose/desired result viz., manufacture / emergence of a different commodity / end product. The expressions “use” in manufacture on the one hand and “damaged” and “destroyed” are antithetical and irreconcilable with each other. If we keep the above aspect in mind it would be evident that manufacturing or invisible loss which is admittedly an inevitable/inherent part of manufacture would fall within the scope of expressions “used in manufacturing or process of goods”, thus entitled to input tax credit in terms of Section 19 (2) (ii) of TNVAT Act and cannot be stated to be either damaged or destroyed to attract Section 19(9) of the TNVAT Act.

We are fortified in our conclusion that manufacturing /invisible loss is part of manufacturing process and would not attract Section 19(9) of the TNVAT Act by the following judgments:

a. Manufacturing loss forms part of raw material:

The Hon'ble Supreme Court in the case of "**Multimetals limited Vs.**



***Assistant Collector, Central Excise” reported in, 1992 (57) E.L.T. 209***

**(S.C.)** while examining the notification granting exemption from excise duty equivalent to the duty paid on the quantity of raw materials used in the manufacture of pipes and tubes negated/rejected the contention of the revenue that manufacturing loss is not entitled to the benefit of exemption holding that “manufacturing loss” forms part of raw material. The relevant portion of the judgment is extracted hereunder:

*“Though there was some dispute at an initial stage as to whether in the manufacture of pipes and tubes any quantity of raw material is lost or as a result of the said loss during the process of manufacture the weight of the final finished product did not represent the weight of the metal used as raw material, in view of the fact that the appellate authority, namely, the Collector of Central Excise has found that there was a manufacturing loss and that the claim of the appellant that the lost quantity was 6.97 per cent appears to be genuine, we proceed on the basis that there was certain manufacturing loss. The High Court was of the view that the notification granted exemption “only on pipes and tubes, which means that the exemption has to be calculated on the basis of the weight of the raw material actually used for the purpose of manufacture of pipes and tubes”.*

*4. We have considered the rival contentions of the parties. It is seen from the facts as appear from the pleadings and the orders that due to cutting the copper wire, melting in electric furnaces and re-melting in the process of manufacture a portion of the copper and copper alloys in its crude form which was used as the raw material is permanently lost. We are not concerned as to the exact quantity of loss in this case but with a question of interpretation as to whether the duty referable to that portion which is lost also should get rebate while assessing for excise duty on the pipes and tubes of copper and copper alloys. The emphasis of the learned counsel for the Revenue was that the levy of excise duty was on pipes and tubes and the rebate related to that of copper and copper alloys content thereof and, therefore, only that quantity that was found forming the pipe or tube could get relief and not the entire quantity which was put in the process of manufacture. This argument does not give full weight to the words “in the manufacture of which duty-paid*



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*copper or copper alloys in any crude form are used, from so much of duty of excise leviable thereon as is equivalent to the duty already paid under sub-item (1) and/or (2) of the said item of copper and copper alloys in any crude form or manufacture thereof". Duty-paid copper and copper alloys in crude form are used in the manufacture of pipes and tubes. Rebate is to be equivalent to the duty already paid on copper and copper alloys in its crude form, that is to say on the input. The idea seems to be that to the extent of the duty paid on the raw material used exemption has to be given and that has no reference to what ultimately formed part of the finished product. It is the duty paid on the input material that is relevant and not the duty referable to the ultimate component of the final product. So far as the manufacturer is concerned he has used copper and copper alloys of a particular quantity in the manufacture of pipes and tubes. The 'manufacturing loss' forms part of the raw material "used" in the manufacture though not reflected in the final product. The relief, as we understand the notification, that has to be given to the manufacturer was in respect of the duty already paid on the raw material used in the manufacture of the final product. That is, the relief has to be given to the extent of the duty paid on the input material and not with reference to the quantity which ultimately forms part of the final product. This is also the ratio of the judgment in Swadeshi Polytex Ltd. v. Collector of Central Excise (1990) 2 SCC 358. So understood we have no doubt that even the manufacturing loss will have to be taken into account in determining the relief to be provided under the said notification. We are also unable to understand the argument of the Revenue based on the difficulty in arriving at the manufacturing loss. If there is any difficulty it is for the manufacturer who claims the relief to prove the loss. There are also scientific methods of arriving at the loss."*

*(emphasis supplied)*

b. Test of quantitative requirement of inputs to manufacture desired quantity of end product:

i. In the case of *M/s.Swadeshi Polytex Ltd., Vs Collector of*

*Central Exercise AIR 1990 SC 301, rejecting the contention of the revenue*

*that ethylene glycol not contained in the end product viz., polyester fiber but*



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in other waste/ by-product ought to be denied the benefit of credit, the

Hon'ble Supreme Court proceeded to hold that as long as it is not possible to

use a lesser quantum of ethylene glycol to produce desired quantity of

polyester fabric the same is entitled to the benefit of credit as having been used

in the manufacture. The relevant portion is extracted below:

*"It is true that when in a fiscal provision, if benefit of exemption to be considered, this should be strictly considered. But the strictness of the construction of exemption notification does not mean that the full effect to the exemption notification should not be given by any circuitous process of interpretation... The said notification exempted all excisable goods on which the duty of excise was leviable and in the manufacture of which any goods falling under Tariff Item 68 (ie. inputs) had been used from so much of the duty of excise leviable thereon as was equivalent to the duty of excise already paid on the inputs. It is clear, however, that ethylene glycol was used in the manufacture of polyester fibre. It appears that methanol arises as a part and parcel of the chemical reaction during the process of manufacture when ethylene glycol interacts with DMT to produce polyester fibre. It is not possible to use a lesser quantum of the ethylene glycol to prevent methanol from arising for producing a certain quantity of polyester fibre. Thus, the quantity of ethylene glycol required to produce a certain quantum of polyester fibre is determined by the chemical reaction. It may be mentioned here that it is not as if the appellants have used excess ethylene glycol wantonly (sic wantonly) to produce the methanol. It is clear that the appellants are not engaged in the production of methanol but in the production of polyester fibre. That position is undisputed. Therefore, it appears that the Tribunal erred when it held that the appellants were not entitled to a part of the credit of duty since ethylene glycol when it interacts with DMT also gives rise to methanol. This construction would frustrate the object of exemption if something which (sic) evidently arises out of the interaction."*

*(emphasis supplied)*

ii. The Hon'ble Supreme Court in the case of "**Union of India Vs.**

**Indian Aluminium Company Ltd.,**" had also applied the test of quantitative

requirements of inputs for the purpose of manufacturing the desired quantity



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of output, to determine whether the inputs are used in the manufacture of other goods. It was held an exact mathematical equation between raw materials used and found in the finished products is irrelevant to determine whether the inputs are used in the manufacture/processing of desired end products. The relevant portion is extracted below:

*"14. The entire quantity of raw material, namely duty-paid aluminium ingots procured by the assesseees from outside was used in the manufacture of aluminium sheets. It is nobody's case that the aluminium sheets which were manufactured by the assesseees could have been manufactured out of a lesser quantity of aluminium ingots than what was actually used. In the process of manufacture, dross and skimmings had to be removed in order that aluminium sheets of the requisite quality could be manufactured. This does not mean that the entire quantity of aluminium ingots was not used for the manufacture of aluminium sheets. In the course of manufacture, a certain quantity of raw material may be lost because of the very nature of the process of manufacture or some small quantity of raw material may form part of wastage or ashes. This does not mean that the entire raw material was not used in the manufacture of finished excisable products. An exact mathematical equation between the quantity of raw material purchased and the raw material found in the finished product is not possible, and should not be looked for."*

*(emphasis supplied)*

In the case of Rupa & Co. Ltd. V. CESTAT, Chennai 2015 (324) ELT 295

(Mad.) the Hon'ble Supreme Court has observed as follows:

*"The expression 'inputs of such finished product', 'contained in finished products' cannot be looked at theoretically with its semantics. It has to be understood in the context of what a manufacturing process is. If there is no dispute about the fact that every manufacturing process would automatically result in some kind of a loss such as evaporation, creation of byproducts, etc., the total quantity of inputs that went into the making of the finished product represents the inputs of such products in entirety.*

*13. If the purport of Rule 9A is not understood in this manner, every manufacturer will have to pay excise duty on the quantity and value of inputs, which go to the making of a finished product, whose weight will*



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*never be equivalent to the sum total of the weight of all the inputs. Therefore, this is not the way to understand Rule 9A.*

### **c. TEST OF INDISPENSABILITY:-**

The Hon'ble Supreme Court in the case of "**CCE V.Ballarpur Industries Ltd.,**" reported in, **(1989) 4 SCC 566** wherein while examining the question as to what would constitute raw material while rejecting the contention that to constitute raw material it is essential that the same must form part of the end product, held as under:

*"13. The question, in the ultimate analysis, is whether the input of sodium sulphate in the manufacture of paper would cease to be a "raw material" by reason alone of the fact that in the course of the chemical reactions this ingredient is consumed and burnt up. The expression "raw material" is not a defined term. The meaning to be given to it is the ordinary and well-accepted connotation in the common parlance of those who deal with the matter;*

*14. The ingredients used in the chemical technology of manufacture of any end product might comprise, amongst others, of those which may retain their dominant individual identity and character throughout the process and also in the end product; those which, as a result of interaction with other chemicals or ingredients, might themselves undergo chemical or qualitative changes and in such altered form find themselves in the end product; those which, like catalytic agents, while influencing and accelerating the chemical reactions, however, may themselves remain uninfluenced and unaltered and remain independent of and outside the end products and those, as here, which might be burnt up or consumed in the chemical reactions. The question in the present case is whether the ingredients of the last mentioned class qualify themselves as and are eligible to be called "raw material" for the end product. One of the valid tests, in our opinion, could be that the ingredient should be so essential from the chemical processes culminating in the emergence of the desired end product, that having regard to its importance in and indispensability for the process, it could be said that its very consumption on burning up is its quality and value as raw material. In such a case, the relevant test is not its absence in the end product, but the dependence of the end product for its essential presence at the delivery end of the process. The ingredient goes into the making of the end product in the*



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sense that without its absence the presence of the end product, as such, is rendered impossible. This quality should coalesce with the requirement that its utilisation is in the manufacturing process as distinct from the manufacturing apparatus”

(emphasis supplied)

Applying the test of indispensability if the inputs are indispensable for the emergence of desired end product it is not open to disallow the claim of input tax credit on the ground of manufacturing/invisible loss.

**d. Test of Technical/Practical/Commercial inexpediency:**

It may be relevant to refer to the judgement of the Hon'ble Supreme Court in the case of *"J.K.Cotton Spinning & Weaving Mills Co.Ltd., Vs. The Sales Tax Officer, Kanpur and Another"* reported in 1965 AIR SC 1310 wherein the scope of the expression “in the manufacture of goods” employed in Section 8(3)(b) of the Central Sales Tax Act, while extending the benefit of concessional rate of tax was examined. It was held that the expression in the manufacture of goods would encompass, the entire process carried on by the dealer for converting raw materials into finished goods. The Hon'ble Supreme Court applied the test of "commercial inexpediency" to determine whether a process would fall within the expression in the manufacture of goods, while making it clear that the expression in the manufacture of goods should not be curtailed by some theoretical possibility over looking/disregarding commercial inexpediency while examining the scope of the expressions “in the



manufacture of goods”. If manufacturing/invisible loss is tested applying the test of technical/practical/commercial expediency and found that it is incapable of manufacturing the end product without the input of the requisite/utilised quantity then there cannot be a denial of input tax credit alleging manufacture/invisible loss. The relevant portion of the judgment extracted below:

*" The expression "in the manufacture of goods" should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that but for that process, manufacture or processing of goods would be commercially inexpedient, goods required in that process would, in our judgment, fall within the expression "in the manufacture of goods." For instance, in the case of a cotton textile manufacturing concern, raw cotton undergoes various before cloth is finally turned out. Cotton is cleaned, carded, spun into yarn, then cloth is woven, put on rolls, dyed, calendered and processes pressed. All these processes would be regarded as integrated processes and included" in the manufacture" of cloth. It would be difficult to regard goods used only in the process of weaving cloth and not goods used in the anterior processes as goods used in the manufacture of cloth. To read the expression "in the manufacture" of cloth in that restricted sense, would raise many anomalies. Raw cotton and machinery for weaving cotton and even vehicles for transporting raw and finished goods would qualify under rule 13, but not spinning machinery, without which the business cannot be carried on. In our judgment, rule 13 does not justify the importation of restrictions which are not clearly expressed, nor imperatively intended. Goods used as equipment, as tools, as stores, as spare parts, or as accessories in the manufacture or processing of goods, in mining, and in the generation and distribution of power need not, to qualify for special treatment under section 8(1), be ingredients or commodities used in the processes, nor must they be directly and actually needed for "turning out or the creation of goods." In our judgment if a process or activity is so integrally related to the ultimate manufacture of goods so that without that process or activity manufacture may, even if theoretically possible, be commercially inexpedient, goods intended for use in the process or activity as specified in rule 13 will qualify for special treatment."*

*(emphasis supplied)*



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The above judgments leave no room for any doubt that quantitative

tally between the raw material used and the end product manufactured is foreign to the concept of manufacture. The above requirement is contrary to technical/practical/commercial expediency involved in the activity of manufacture. It is clear that once input is used in the manufacture the mere fact that it is not contained in the end product may have no bearing on the dealers entitlement to input tax credit in terms of Section 19 (2) (ii) of the TNVAT Act. Thus applying any of the above tests viz., test of indispensability, quantitative requirement, commercial expediency the irresistible conclusion is that manufacturing/invisible loss which is inevitable/unavoidable/inherent part of manufacturing process cannot be denied the benefit of Input Tax Credit in terms of Section 19(2)(ii) of the TNVAT Act invoking Section 19(9) of the TNVAT ACT.

15. The contention of the revenue in treating manufacturing/invisible loss as attracting Section 19(9) of the TNVAT Act ought to be rejected also in view of the fact that it is contrary to the following rules of construction:

I. Effort must be to give effect to all parts of the statute and avoid redundancy and conflict based on the rule on harmonious construction. Inconsistency and repugnancy to be avoided:

While Section 19(2)(ii) of the TNVAT Act extends the benefit of



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input tax credit on goods used in manufacture, Section 19(9) of the TNVAT

Act cannot be understood to curtail/whittle down the said benefit in respect of the portion of the input which is treated as manufacturing/invisible loss though the same is admittedly an inevitable/inherent part of the manufacturing process. If the contention of the revenue were to be accepted it would result in a head on collision between Section 19 (2) (ii) and Section 19(9) of the TNVAT Act. A construction which Courts have consistently held ought to be avoided. It is trite law that a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. A construction which produces incongruous results must be avoided. A construction which avoids inconsistency or repugnancy either within a section or between a section and other parts of the statute must be adopted. It is the duty of the Court to avoid “a head on clash” between two sections of the Act and construe it harmoniously.<sup>1</sup>

A dealer is entitled to claim input tax credit in terms of Section 19(2)(ii) of the Act on inputs being used in the manufacture or processing of other goods in the State. Section 19(9) of the TNVAT Act does not touch upon/ whittle down/ impair the right of a dealer to claim input tax credit on being used in the manufacture of other goods. Section 19(9) of the TNVAT

<sup>1</sup> <https://www.mhc.tn.gov.in/judis> University of Allahabad v. Amritchand Tripathi AIR 1987 SC 57.



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Act, gets attracted when the goods are damaged in transit or destroyed at an intermediary stage of manufacture, its field of operation or the acts mentioned/provided viz., “*damaged*” or “*destroyed*” are acts foreign to regular/normal manufacturing activity. Thus, Sections 19(2)(ii) and 19(9) of the TNVAT Act covers circumstances that are parallel/ diametrically opposite and do not overlap. If Section 19 (2) (ii) of TNVAT Act and 19 (9) of the TNVAT Act are understood in the above manner both provisions could be effective and operate without conflict.

II. Parliament is presumed not to give with one hand and not to take away with the other:

Taking into account the admitted position that the alleged manufacturing / invisible loss is an inevitable part of manufacturing process the contention of the revenue that manufacturing/invisible loss would nevertheless be covered by Section 19(9) of the TNVAT Act, would result in negation/taking away the benefit of Input Tax Credit extended/granted under Section 19(2) (ii) on inputs used in manufacturing or processing of goods by invoking Section 19(9) of the TNVAT Act. This is again a construction which should be avoided for it should not be lightly assumed that “Parliament” had given with one hand what it took away with the other.<sup>1</sup> The provisions of one

<https://www.mhc.tn.gov.in/judis>  
<sup>1</sup> Godawat Pan Masala Products I.P. Ltd. v. Union of India, (2004) 7 SCC 68



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Section of a statute cannot be used to defeat those of another.<sup>2</sup>

**III. Courts will avoid a construction which produces unjust/ unreasonable results:**

The construction placed by the revenue would result in two classes of Input Tax claimants viz.,

a. A dealer using inputs in manufacture or processing of goods which forms part of the end product and entitled to Input Tax Credit on the entire input.

b. A dealer using inputs in manufacture or processing of goods and the nature of manufacturing activity is such that a portion of the input does not form part of the end product and treated as manufacturing / invisible loss resulting in reversal / denial of credit.

Inputs constitute a single class, however the denial of Input Tax Credit on manufacturing/invisible loss would result in disparity in treatment on the basis of existence or otherwise of the input in the end product which is neither reasonable nor rational. In other words, the construction by the revenue if accepted would result in creation of two classes without any rational basis thereby producing unjust and unreasonable results through a process of interpretation. Such interpretation must be avoided for it would also render the provisions vulnerable to challenge as violative of Article 14 of

<sup>2</sup> Sanjeevaya D. V Election Tribunal, Andhra Pradesh, AIR 1967 SC 1211



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the Constitution of India on the ground of producing discriminatory results apart from suffering from the vice of manifest arbitrariness. In this regard it is well settled that the Court will interpret a statute, as far as possible, agreeable to justice and reason and that in case of two or more interpretations, one which is more reasonable and just will be adopted, for there is always a presumption of constitutionality and that the law-maker never intended injustice and unreason.<sup>1</sup>

On analysis of the scope and interplay between Sections 19(2)(ii) and 19(9) of the TNVAT Act, precedents dealing with manufacturing/invisible loss and the rules of construction referred above we find that Section 19(9) of the TNVAT Act would not get attracted to manufacturing/invisible loss which is inevitable and inherent part of manufacture and thus covered by Section 19(2)(ii) of the TNVAT Act. However, this would not preclude the assessing authority from enquiring if the claim of use of input in manufacture is genuine or otherwise.

16. For the above reasons, the impugned Circular dated 20.10.2011 insofar as it is contrary to the law declared by this Court with regard to manufacturing/invisible loss is set-aside. Wherever the challenge is to the notice it is open to the appellants/petitioners to submit their objections which

<sup>1</sup> Madhav Rao Jivaji Rao Scindia v. Union of India, (1971) 1 SCC 85, Union of India v. B.S. Agarwal, (1997) 8 SCC 89, Westminster City Council V. Debenhams PLC. [1986] 3 WLR 1063, Paradise Printers v. Union Territory of Chandigarh, (1988) 1 SCC 440



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shall be decided in accordance with the law declared by this Court after

affording the appellants/ petitioners reasonable opportunity of being heard.

Wherever the challenge is to orders of assessment the same insofar as manufacturing/invisible loss is set-aside and it is open to the revenue to redo the assessment in accordance with the law laid down by this Court after affording the appellants/petitioners reasonable opportunity of being heard.

17. With the above directions, the batch of writ appeals/ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[S.V.N., J.] [M.S.Q., J.]

**28.02.2023**

Index: Yes/No

Speaking/Non speaking order

Neutral Citation: Yes/No

shk

**S.VAIDYANATHAN, J.**  
**AND**  
**MOHAMMED SHAFFIQ, J.**

shk

To:

1. The Assistant Commissioner (CT),  
Tirupur (North) Circle, Tirupur.

2. The Commerical Tax Officer,  
Special Circle-I,  
Tirupur.

<https://www.mhc.tn.gov.in/judis>



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3. The Principal Secretary  
Commissioner of Commercial Taxes  
Ezhilagam, Chepauk,  
Chennai 600 005.

**Pre-Delivery Order in**  
**W.A.Nos.1094 & 1095 of 2015 etc., batch case**

**28.02.2023**