IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.03.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.17006 & 17008 of 2020 &
WMP.Nos.21091 & 21094 of 2020

Jagdhatri Papers (P) Limited,
represented by its Director,
Mr.Satish Kumar Goel,
15,652,654, Zamin Endathur,
Keeralvadi, Maduranthakam. ... Petitioner in both W.P.'s

Vs

The Assistant Commissioner (ST),
Madurantakam Assessment Circle,
15/9, Car Street,
Madurantakam. ... Respondent in both W.P.'s

PRAYER in W.P.No.17006 of 2020: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in TIN 33051681559/2016-17 dated 9-10-2020 and quash the same and direct the respondent to consider the objections dated 27-12-2019 and 12-2-2020.

PRAYER in W.P.No.17008 of 2020: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in TIN 33051681559/2017-18 dated 22-10-2020 and quash the same and direct the respondent to consider the objections dated 27-12-2019 and 12-2-2020.

in both WP's

For Petitioner : Mr.R.Kumar

For Respondent :Mrs.K.Vasanthamala
Government Advocate

COMMONORDER

The petitioner is a dealer registered under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act'). The present challenge is to two orders of assessment dated 09.10.2020 and 22.10.2020 passed under the TNVAT Act, in respect of turnover from the manufacture of kraft paper.

2. The petitioner has admittedly, effected sales both locally as well as inter-state. Some portion of the sales are related to units located in Special Economic Zones (SEZ), which manufacture cardboard boxes out of the kraft paper supplied by the petitioner. Such sales are declared as Zero-rated sales.

3. A notice came to be issued by the respondent proposing to reverse Input Tax Credit (ITC), applying the provisions of Section 8(6) of the Central Sales Tax Act, 1956 (in short 'CST Act'). The basis for reversal was that sale of

the goods to SEZ in other States are exempt from payment of tax and ITC is impermissible in terms of such exempted sales. This is the sole basis on the basis of which impugned notice has been issued.

4. Learned Government Pleader upon a direction from the court, has produced a copy of the audit objections, based upon which the assessments have been completed. The Audit Officer in audit note No.40, refers to Form WW filed by the petitioner concluding that the dealer has effected sales to SEZ units in other states. However, the Form WW produced by the petitioner and forming part of the records do not indicate so. The basis of reversal is thus found to be erroneous .

5. The question of reversal of ITC in regard to supply made to SEZ was considered by a Division Bench of this Court in W.A.No.703 of 2020 & Batch in the case of *Consolidated Construction Consortium Ltd., Vs. The Assistant Commissioner (CT),* (decision dated 28.02.2023). In conclusion, the assessments have been remanded to the Assessing authority for fresh consideration. The operative portion of the order reads thus:-

> *"16. <u>To sum up:</u>*
>
> *a. Section 18 of the TNVAT Act, confers two benefits viz., Zero Rate i.e., sale on which no tax is payable but on which Input Tax Credit is admissible and the second being refund in addition to the above*

benefit of Zero rate. The benefits are independent of each other.

b. Export of goods is not a condition precedent or sine qua non to qualify as a Zero Rate sale as long as the sale falls within clause(ii) of Section 18 (1) of the TNVAT Act.

c. To claim refund in terms of the Section 18 (2) read with 18 (3) of the TNVAT Act, export of goods is an essential condition but not the benefit of Zero Rate.

d. Zero Rate is distinct from exemption and thus the provisions of Section 19 (5) of the TNVAT Act would not get attracted.

e. The impugned circular is set-aside to the extent it is contrary to the law declared by this Court.

f. The provisions of Section 18 the TNVAT Act cannot be controlled by a notification under Section 30 of the TNVAT Act inasmuch as Section 18 of the TNVAT Act confers a larger benefit. It is open to an assessee to claim a larger/ greater benefit.

g. The expression sale in Section 18 of the TNVAT Act must be understood keeping in view the definition of sale under Section 2(33) of the TNVAT Act. Thus, works contract or for that matter any of the categories of mutant sales which is deemed to be sale would fall within the meaning of the expression sale employed in Section 18 of the TNVAT Act. ”

6. In light of the aforesaid order, the impugned assessment also stands remanded. The respondent shall issue notice to the petitioner, afford a hearing and pass orders in line with the order of the Division Bench within a period of

twelve (12) weeks from date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

mpl **30.03.2023**

Index : Yes / No
Speaking Order / Non Speaking Order
Neutral Citation:Yes/No

To

The Assistant Commissioner (ST),
Madurantakam Assessment Circle,
15/9, Car Street,
Madurantakam.

Dr.ANITA SUMANTH, J.

mpl

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