IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

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THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.Nos.20002 and 20004 of 2023
and WMP.Nos.19351 and 19357 of 2023

Ms.Global India Automotive Private Limited
(Rep by its authorised Signatory Mr.C.S.Srinivasan)
Survey No.133-137, 139-141,
Sriperumbudur, Kancheepuram – 602 105.

... Petitioner in both cases

Vs

1.State / Commercial Tax Officer,
Oragadam Assessment Circle,
Varadharajapuram – 602 103.

2.Assistant Commissioner (CT)
Oragadam Assessment Circle,
Varadharajapuram – 602 103.

3.Appellate Deputy Commissioner (ST) (FAC)
Chennai South, Chennai – 600 006.

... Respondents in both cases

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in the impugned order bearing reference number RC/33241667341/2013-14 26.05.2023 received on 03.06.2023 and RC/33241667341/2012-13 26.05.2023 respectively passed by the respondent, quash the same and direct the respondent to rectify the order following the Veesons decision and other relevant documents in accordance with law.

For Petitioner : Mr.K.Senguttuvan
For Respondents : Mr.Amirtha Poonkodi, GA

COMMON ORDER

This is the 4th round of litigation before this Court on the issue relating to availability of input tax credit on generator, folk lift and crane hoist purchased by the petitioner during 2012-2013 and 2013-2014.

2. The petitioner had earlier suffered an adverse orders in the hands of the assessing officer. This was the subject matter of the writ petition for the assessment year 2012-2013 in WP.No.4537 of 2015. By an order dated 23.03.2015, the assessment order passed for the assessment year 2012-2013 on 06.01.2015 was set aside and the case was remitted back to the respondents.

3. The aforesaid order of the High Court culminated adverse orders both dated 24.07.2015, against the petitioner for the assessment year 2012-2013 and for the assessment year 2013-2014. The petitioner therefore preferred two separate appeals against Assessment Order dated

24.07.2015. By common impugned order dated 17.05.2016, the Appellate Authority remitted the case back to the first respondent, once again to pass a fresh orders on merits.

4. Pursuant to the aforesaid order dated 17.05.2016 of the Appellate Authority, notices were issued to the petitioner for the respective assessment years. The petitioner was called upon to substantiate the case for availing input tax credit from these items and to explain as to why the credit could not be denied. Notices also called upon the petitioner to produce documents to substantiate whether these items generator, folk lift and crane hoist were "capital goods" or not within the meaning of Section 2(11) TNVAT Act, 2006.

5. The petitioner however failed to reply to the notices issued pursuant to the aforesaid remand order dated on 17.05.2016. Under these circumstances, the two separate orders came to be passed on 31.01.2019 for the respective assessment years.

6. They more or less read identically. Relevant portion of the orders reads as under :-

"Tvl. M.S.Global India Automotive Pvt Limited doing business at Survey. No. 133(Part), 134 (Part), 135 (Part) SIPCOT Industrial Estate, Oragadam Village, Singaperumal Koil Road, Mattur Post, Sriperumbudur Taluk-602 105 were assesee in the books of the State Tax Officer, Oragadam Assessment Circle. Their place of business was visited by Enforcement official and they have noticed certain defects. Based on the defects a proposal was evolved and notices were issued to the dealer and orders were passed on 24.07.2015.

Against the order the dealers filed an appeal before the Appellate Deputy Commissioner(CT) (South), Chennai - 06 in A.P. No. 203/2015. The Appellate Deputy Commissioner (ST), Vide her Order dated 17.05.2016 has partly Remanded and Partly Allowed the Appeal.

Accordingly a notice regarding remanded portion of ITC on ineligible capital goods was issued to dealers on 07.09.2016. The dealer vide the letter dated 21.09.2016 has submitted only copy of the document submitted at the time of appeal and not any other *document to prove that the commodities purchased capital goods are used in the manufacturing process.*

Accordingly another notice was issued to the dealer on 26.12.2016. The dealers have not filed any reply till date. Therefore, I have no other option other than to confirm the reversal of ITC and Penalty thereon.

Therefore, I finally assess the dealer under the TNVAT Act 2006 for the year 2013-14 as below : -

DETAILS	REVERSAL OF ITC	PENALTY U/S 27(4) (i) @ 100%
ITC Claimed in Excess of 5% on Capital Goods (Allowed by Appeal DC's)	NIL	NIL
ITC claimed on ineligible Capital Goods disallowed	31,37,452-	31,37,452-
Total Due	31,37,452-	31,37,452-
Amount paid at the time of Appeal	19,08,200-	NIL
Balance	12,29,252-	31,37,452-

7. Aggrieved by the same, the petitioner has filed applications under Section 84 of TNVAT Act, stating that the impugned order was passed contrary to the decision of this Court in ***Vessons Energy System in WP.No.5866 of 2010 dated 27.03.2014***. By way of abundant caution, the petitioner has also filed an appeal before the Appellate

Commissioner. The Appellate Commissioner has also dismissed the appeal filed by the petitioner by two separate orders dated 16.08.2019.

8. The first respondent has now dismissed the application filed under Section 84 of the TNVAT Act seeking to rectify the order dated 31.01.2019. The specific case of the petitioner is that the goods are "capital goods" within the meaning of Section 2(L) of the TNVAT Act, 2006 as they are integrally utilised in the manufacture of final products. The petitioner was called upon to furnish the copy of the Central Excise Registration. A copy of the same was also filed before this Court today.

9. Prima facie, it appears that the items in question viz., generators, folk lifts and crane hoist are capital goods within the meaning of Section 2(11) of TNVAT Act, 2006 and therefore input tax credit availed by the petitioner under Section 19 of the TNVAT Act, 2006 are in order. To deny the input tax credit on "capital goods", there should be materials available before the respondents to substantiate that these goods do not satisfy the definition of "capital goods" and were not used for manufacturing of final products.

10. The input tax credit on “capital goods” under the TNVAT Act 2006 are inspired for Cenvat credit Rules 2004 framed under the Central Excise Act, 1944.

11. The Supreme Court has been liberal in allowing the input tax credit and on the capital goods under the provisions before the erstwhile Central Excise Rules, 1944 and thereafter under the provisions of the CENVAT Rules, 2004.

12. Unless, the department is able to establish that these goods were not used in the manufacturing of final products or was used in the manufacturer is exempted, denial input tax credit to the petitioner cannot be justified.

13. Be that as it may, considering the facts that the orders have been passed without reasons, Court is left with no other option except to set aside the impugned orders and remits the case back to the respondents to pass appropriate orders on merits and in accordance with law, within a period of 45days from the date of receipt of a copy of this order.

14. The petitioner shall in any event produce necessary evidences to show that these goods were indeed utilised in the manufacture of taxable goods, goods either directly or indirectly. The respondents may depute an officer to examine whether these goods were indeed put to use for in the manufacture of final products for the purpose specified in Section 2(11) of TNVAT Act, 2006.

15. With the above observation, the writs petitions are allowed by way of remand. Consequently, connected miscellaneous petitions are closed. No costs.

16.08.2023

Index: Yes/ No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation : Yes/No
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To
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