IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2024

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.6490 of 2020, 553 & 561 of 2021
and W.M.P.Nos.7688 of 2020, 615 & 616 of 2021

Tvl.Sunraja Oil Industries (P) Limited,
Represented by its Managing Director,
K.Gandhi Raajhan,
No.88/1, Puliankadu,
Nasiyanur Post,
Erode – 638 107.

...Petitioner in W.Ps

Versus

The Assistant Commissioner (ST),
Thindal Assessment Circle,
Erode.

...Respondent in all W.Ps

Prayer in W.P.No.6490 of 2020:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the files of the respondent in TIN: 33762903126/2012-13 dated 09.01.2020 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

Prayer in W.P.No.553 of 2021:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the files of the respondent in TIN: 33762903126/2013-14 dated 12.11.2020 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

Prayer in W.P.No.561 of 2021:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the files of the respondent in TIN: 33762903126/2014-15 dated 12.11.2020 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner in all W.Ps	:	Mr.T.Ramesh for Mr.P.Rajavelu
For Respondent in all W.Ps	:	Mr.C.Harsharaj, Additional Govt. Pleader

COMMON ORDER

With the consent of both sides, these writ petitions are taken up for final disposal.

2. In W.P.No.6490 of 2020, the petitioner has challenged the impugned Assessment Order bearing TIN: 33762903126/2012-13 dated 09.01.2020 passed by the respondent for the Assessment Year 2012-13. In

W.P.Nos.553 & 561 of 2021, the petitioner has challenged the two separate Assessment Orders bearing TIN: 33762903126/2013-14 & TIN: 33762903126/2014-15 dated 12.11.2020 passed by the respondent for the Assessment Years 2013-14 & 2014-15 respectively. Details of the impugned Assessment Orders in these writ petitions are as follows:

Sl.No.	Writ Petition No.	Date of the Assessment Order	Assessment Year
1	6490 of 2020	09.01.2020	2012-13
2	553 of 2021	12.11.2020	2013-14
3	561 of 2021	12.11.2020	2014-15

3. The case of the petitioner is that the petitioner is an importer and manufacturer of edible oil. The petitioner had purchased Raw Sunflower Oil, Refined Sunflower Oil & Rice Brawn Oil from local dealers and had also imported Groundnut Oil from other States and sold the same locally. According to the petitioner, the petitioner has separate storage tanks for each raw oil and refined edible oil and also, for the by-products. All the sales made to interstate sellers and local dealers and the interstate purchase/import are all accounted and maintained in separate folios. It is stated that the petitioner had claimed Input Tax Credit (ITC) only on the local purchases effected from local registered dealers.

4. A Notice dated 29.06.2019 was issued to the petitioner by the respondent Department. A detailed reply was by the petitioner on 12.07.2019 & 19.07.2019 and on other occasions stating that the interstate movement of transactions have been met only out of purchases from other States and that no local purchase has been utilized in such interstate course of trade for the purpose of availing ITC.

5. It is submitted that without considering the reply of petitioner, the respondent has passed the Assessment Order dated 09.01.2020 for the Assessment Year 2012-13. Relevant portion of the Assessment Order dated 09.01.2020 impugned in W.P.No.6490 of 2020 is extracted hereunder:

> *"Finally, the dealer have filed their objection in the letter dated 03.09.2019, in which, they have consolidated that they have filed the reply on 19.07.2019 and that has to be considered and call for the further requirements.*
>
> *The dealers objection, so far in various letters of objection, is consolidated as they have contended that the interstate movement of transactions have been met only out of purchases from other countries and other states. Whereas, the contention is not supported with documentary evidences.*
>
> *1. They have not evidenced that they are maintaining the different type of purchase with its own out-track to sale points to identify the specific goods, moving into specific track.*
>
> *2. Being manufacturer, they have not come forward to establish that they have maintained the production-cum-stock account or separate*

production units and storage facility for local purchase and other purchase, through which the batches of purchases can be tracked up to its final end.

3. Their purchase are common from all points, such as local and interstate and the sales are also common at all points, such as local and interstate, in which the identification of one-to-one follow up of the commodity, which was moved out of which, is not at all possible.

In view of the above reasons, the contention that they interstate movements are met out of the purchases from other countries and other states alone is not sustained with documentary evidences. Hence, the contention is not sustainable.

Secondly, in their objection in the first letter itself, themselves have admitted and committed that the reversal of input tax credit has to be worked out only on the proportionate of the local purchase. When the actual proportion of the utilisation of local purchase in the said intersate movement is not scientifically maintained in the book keeping of their business house, there is no alternative in the hands of the assessing authority but maintaining the settled formulae of proportion on the pro-rata basis, which has been adopted while making the proposal itself. Hence, there is no objection point in the contention.

In view of the above facts, the contentions, put forth in the objections so far filed are not sustainable to the proposals made. Hence, the assessing authority finds no alternative than finalising the assessment by confirming the proposal. However, before finalising the assessment, they are afforded with a final opportunity.

Objections if any to the proposal, they are requested to file at the time of personal hearing, as afforded before the undersigned at 11.30 A.M on 23.12.2019 with documentary evidences what they desire to produce, failing which, orders were passed, based on the merit of the available details, without any further opportunity.

Since, the dealer no filed any objection and failed to utilise the personal hearing opportunity, the dealer where again offered Personal hearing at 3.00 P.M on 08.01.2020 as a final opportunity to file their objection.

The authorised representative of the dealers Mr.R.Sambath Kumar appeared at 11.30 A.M on 08.01.2020 before the undersigned and reiterated the same contention filed in their earlier written reply without any supporting documents.

<u>Conclusion of the Assessing Authority:</u> In view of the above facts, the contentions, put forth in the objections so far filed are not sustainable to the proposals made in the absence above supporting documents even after adequate time and opportunities. Hence, the assessing authority finds no alternative than finalising the assessment u/s. 27(2) of the TNVAT Act 2006 by confirming the proposal as follows.

Reversal of ITC u/s 19(5)(c)	*Rs. 27,667.00*
Reversal of ITC u/s 19(4)	*Rs.65,54,720.00*
Total tax Due	*Rs.65,82,387.00*
Tax paid	*Rs.Nil*
Balance	*Rs.65,82,387.00*

Notice in Form O issued"

6. The further case of the petitioner is that in respect of the Assessment Year 2011-12, the respondent had issued a similar notice prescribing a particular formula for reversal of Input Tax Credit (ITC) to comply with the requirements of Section 19(4) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "TNVAT Act"). It is stated that only in accordance with the same procedure and formula, the petitioner submitted its reply for the Assessment Year 2012-13, but, the same was not accepted by the Assessing Authority for the Assessment Year 2012-13, though it was approved for the earlier Assessment Year.

7. The learned counsel for the petitioner submitted that even though the petitioner has complied with the requirements of Section 19(4) & 19(5)

of the TNVAT Act, the respondent issued the aforesaid notice which has culminated in the impugned Assessment Order dated 09.01.2020.

7.1. The Assessment Orders dated 12.11.2020 passed by the respondent for the Assessment Years 2013-14 and 2014-15 are the subject matter of challenge in W.P.Nos.553 & 561 of 2021 respectively. For the sake of clarity, relevant portion of the Assessment Orders dated 12.11.2020 impugned in W.P.Nos.553 & 561 of 2021 are extracted hereunder:

(i) Assessment Order dated 12.11.2020 impugned in W.P.No.553 of 2021:

"__Conclusion of the assessing officer:__

Their contention was carefully examined with reference to the Form WW, Contentions put forth by them, Documentary evidences produced by them and other records with the following findings:

It has been verified and recorded that they have totally five numbers of storage tank only each with the 1000 tons storing capacity. From their submission, it is clear that they are dealing in different type of oil such as ***Raw Sunflower Oil, Refined Sunflower, Raw rice oil, Refined rice oil, Raw groundnut oil, Refined groundnut oil*** *and by-products such as* ***rice sludge oil, groundnut sludge oil, sunflower sludge oil rice filtered wax, sunflower filter wax.*** *They are importing* ***Raw Sunflower Oil and Raw Palm Kernel Oil.*** *All above items are purchased by them from both local, interstate and Imports diverting towards the sales of local and interstate needs. Considering the practical requirement of all these different categories, it is very clear that all these different oils have to be stored in different containers. Further, they are undergoing manufacturing process to finished products, which are in equal number of categories and they also need to be stored in different containers. Without these brief arrangement of storage, the monitoring and maintenance of quantum wise disposal through different channel of sales* *catering local and interstate market needs. From their report and documents submitted, it is clear that they are maintaining only five containers tanks which cannot cater the above needs. It has no clarity to understand how such a vast number of line of products can be channelized with five number of tanks to identify the flow of different and connected inflow and outflow. They are contenting that they are maintaining different stock register for different category of products, which is not understood how it is possible without parallel different storage amenity arrangements. Moreover, among their documents, they have not produced any day-to-day inward and outward supply of materials from their* ***Input to manufacturing, Manufacturing to finished goods, Input to direct supply, Finished goods to supply,*** *without which the statement that maintaining different stock register is not scientific and acceptable. Hence, with a clear examination of their documents, it is clearly noticed that the stock details, what they have produced, is not reflecting the fact on their flow of utilization of inputs to outputs on different channels. In view of this fact, the contention put forth by them is not sustainable and thereby it is overruled. Therefore, the proposal for reversal of credit u/s. 19(4): 19(5)(c) and 19(2)(v) are, on the proportionate basis, hereby confirmed. The reversal amount is worked out as detailed below:*

Reversal of credit under Section 19(4) of TNVAT Act, 2006:

Input tax credit X Consignment sales
Aggregate Sales

Rs.1,85,00,349.00 X 139,16,48,043.00 = *Rs.77,59,046.00*
Rs.331,77,62,740.00

Reversal to be imposed	*= Rs.77,59,046.00*
Reversal already made by them	*= Rs. 3,58,155.00*
Balance to be levied	*= Rs.74,00,891.00*

Reversal of credit under section 19(5)(c) of TNVAT Act 2006:

Input Tax Credit X Interstate Sales u/s.8(2)
Aggregate Sales

Rs.1,85,00,349.00 X Rs.1,51,73,179.00
Rs.331,77,62,740.00

Reversal to be imposed *= Rs.85,102.00*

Reversal of credit under Section 19(2)(v) of TNVAT Act, 2006:

<u>Input tax credit X Inter-state Sales with Form C X 3</u>
Aggregate Sales X 5

<u>Rs.1,85,00,349.00 X 20,51,163.00 X 3</u>
Rs.331,77,62,740.00 X 5

Reversal to be imposed = Rs.11,437.00

In view of the above discussion, the assessment made under Section 27 of the Act, in the proceedings dated 13.04.2018 is re-determined as detailed below:

Reversal of ITC u/s.19(4)	:	*Rs.74,00,891.00*
Reversal of ITC u/s.19(5)(c)	:	*Rs. 85,102.00*
Reversal of ITC u/s.19(2)(v)	:	*Rs. 11,437.00*
TDS at 2% on Rs.4,48,600.00	:	*Rs. 8,972.00*
Total		*Rs.75,06,402.00*

	Due	*Paid/Reversed*	*Balance*
Tax	*Rs.75,06,402.00*	*Rs.0.00*	*Rs.75,06,402.00*
Penalty u/s.27(3)	*Rs.4,486.00*	*Rs.0.00*	*Rs. 4,486.00*
Penalty u/s.27(4)	*Rs.0,000.00*	*Rs.0.00*	*Rs. 0,000.00*

Demand Notice In Form O and RR issued."

(ii) Assessment Order dated 12.11.2020 impugned in W.P.No.561 of 2021:

*"**<u>Conclusion of the assessing officer:</u>***

Their contention was carefully examined with reference to the Form WW, Contentions put forth by them, Documentary evidences produced by them and other records with the following findings:

*It has been verified and recorded that they have totally five numbers of storage tank only each with the restricted storing capacity. From their submission, it is clear that they are dealing in different type of oil such as **Raw Sunflower Oil, Refined Sunflower, Raw rice oil, Refined rice oil, Raw groundnut oil, Refined groundnut oil** and by-products such* *as* ***rice sludge oil, groundnut sludge oil, sunflower sludge oil rice filtered wax, sunflower filter wax.*** *They are importing* ***Raw Sunflower Oil and Raw Palm Kernel Oil****. All above items are purchased by them from both local and interstate market and diverting towards the sales of local and interstate needs. Considering the practical requirement of all these different categories, it is very clear that all these different oils have to be stored in different containers. Further, they are undergoing manufacturing process to finished products, which are in equal number of categories and they also need to be stored in different containers. Without these brief arrangement of storage, the monitoring and maintenance of quantum wise disposal through different channel of sales catering local and interstate market needs. From their report and documents submitted, it is clear that they are maintaining only five containers tanks which cannot cater the above needs. It has no clarity to understand how such a vast number of line of products can be channelized with five number of tanks to identify the flow of different and connected inflow and outflow. They are contenting that they are maintaining different stock register for different category of products, which is not understood how it is possible without parallel different storage amenity arrangements. Moreover, among their documents, they have not produced any day-to-day inward and outward supply of materials from their* ***Input to manufacturing, Manufacturing to finished goods, Input to direct supply, Finished goods to supply,*** *without which the statement that maintaining different stock register is not scientific and acceptable. Hence, with a clear examination of their documents, it is clearly noticed that the stock details, what they have produced, is not reflecting the fact on their flow of utilization of inputs to outputs on different channels. In view of this fact, the contention put forth by them is not sustainable and thereby, it is overruled. Therefore, the proposal for reversal of credit u/s.19(4): on the proportionate basis, hereby confirmed. The reversal amount is worked out as detailed below:*

<u>Reversal of credit under Section 19(4) of TNVAT Act, 2006:</u>

<u>Input tax credit X Consignment Sales X 5</u>
Aggregate Sales X 5

<u>Rs.2,10,10,983.00 X Rs.397,71,86,756 X 5</u>
Rs.710,27,87,232 X 5

Reversal to be imposed = Rs.1,17,64,987.00

In view of the above discussion, the assessment made under Section 27 of the Act, in the proceedings dated 13.04.2018 is re-determined as detailed below:

	Turnover	Tax
Purchase return disallowed at 5%	*:Rs.10,82,992.00*	*Rs. 54,150.00*
TDS liability on construction at 2%	*:Rs. 9,19,646.00*	*Rs. 18,593.00*
Stock difference at 5%	*:Rs.30,25,433.00*	*Rs.1,51,272.00*
Add:		
Reversal of ITC u/s. 19(4)	*:*	*Rs.1,17,64,987.00*

	Due	Paid	Balance
Tax	*Rs.1,19,89,002.00*	*Rs.0.00*	*Rs.1,19,89,002.00*
Penalty u/s.27(3)@50	*Rs. 1,12,008.00*	*Rs.0.00*	*Rs. 1,12,008.00*
Penalty u/s.27(4)	*Rs.0.00*	*Rs.0.00*	*Rs.0.00*

Demand Notice In Form O and RR issued."

7.2. The learned counsel for the petitioner further submitted that without properly verifying and appreciating the material evidence, the respondent has passed the impugned Assessment Orders. It is stated that the petitioner had claimed ITC only on the purchases effected from local registered dealers. The petitioner has maintained a separate stock register for purchase made and sales carried for local items.

7.3. It is submitted that the petitioner has clearly demonstrated with photographs and internal documents to substantiate that there was no intermixing between the stocks that were procured from the dealers within the State and the stocks imported from outside the State i.e., purchase from other states.

7.4. The learned counsel for the petitioner submitted that though the petitioner has separate storage tanks, the respondent (Assessing Officer) came to an erroneous conclusion that the petitioner firm has only 5 storage tanks and passed the impugned Assessment Orders.

8. On the other hand, the learned Additional Government Pleader for the respondent submitted that the petitioner had replied to the Notices which preceded the Assessment Orders in the respective writ petitions and that the petitioner had also furnished some documents before the respondent. It is stated that only on the basis of documents which were furnished by the petitioner, the respondent has passed the Assessment Orders. Therefore, there is no scope for interfering with the impugned Assessment Orders under Article 226 of the Constitution of India.

8.1. That apart, learned Additional Government Pleader submitted that insofar as W.P.No.6490 of 2020 is concerned, the Assessment Order dated 09.01.2020 was passed even before the country went into lock-down due to the outbreak of Covid-19 Pandemic and that the writ petition was also filed even before the lock-down. It is submitted that the petitioner had filed its Reply on 03.09.2019 i.e., beyond the period of limitation. Therefore, W.P.No.6490 of 2020 is liable to be dismissed on the aforesaid ground as well.

9. I have considered the arguments advanced by the learned counsel on either side and also, I have perused the materials placed before this Court.

10. As far as this case is concerned, the petitioner has not filed any proper documents relating to number of storage tanks that were available in their units; stock details pertaining to purchase and sale of goods to local dealers as well as those purchased from interstate dealers and Input Tax Credit availed on the imported goods. Therefore, in the absence of such documents, the respondent was compelled to pass the impugned Assessment Orders based on the principle of Preponderance of Probability.

11. The respondent has come to the conclusion that the petitioner is having 5 storage tanks only, in which, the petitioner could not have stored

the different varieties of oil. Hence, the respondent has confirmed the proposal for reversal of credit under Section 19(4) & 19(5) of the TNVAT Act in the impugned Assessment Orders.

12. Considering the above facts and circumstances of the case, this Court is inclined to quash the impugned Assessment Orders in these writ petitions subject to certain condition.

13. Accordingly, the Assessment Order dated 09.01.2020 impugned in W.P.No.6490 of 2020 and Assessment Orders dated 12.11.2020 impugned in W.P.Nos.553 & 561 of 2021 respectively are quashed subject to the condition that the petitioner deposits 10% of the "disputed tax" to the respondent in cash / Demand Draft / other modes, within a period of 30 days from the date of receipt of a copy of this order. On such compliance, the impugned Assessment Orders shall be treated as Show Cause Notices for the respective Assessment Years.

14. The petitioner shall therefore file a detailed reply to the Show Cause Notices particularizing the inflow and outflow and giving the details

of their total number of storage tanks available in their premises during the respective Assessment Years. The respondent shall consider the same and pass appropriate orders, on merits and in accordance with law, preferably, within a period of three months thereafter.

15. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

06.12.2024

mrr
Index : Yes/No
Speaking Order (or) Non-Speaking Order

To
The Assistant Commissioner (ST),
Thindal Assessment Circle,
Erode.

C.SARAVANAN, J.

mrr

W.P.Nos.6490 of 2020, 553 & 561 of 2021

06.12.2024