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W.P.Nos.28371, 28375 and 28378 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.28371, 28375 and 28378 of 2021

M/s.Larsen and Turbo Limited,
Represented by its Manager (Indirect Taxes)
Mr.K.Pattabiraman

... Petitioner in all W.Ps

Vs.

1.The Deputy Commissioner (ST)-II,
Office of the Joint Commissioner (ST),
Large Tax Payers Unit,
4th Floor, Integrated Building,
Nandanam, Chennai – 600 035.

2.The Joint Commissioner (ST) (FAC),
Office of the Joint Commissioner (ST),
Large Tax Payers Unit,
4th Floor, Integrated Building,
Nandanam, Chennai – 600 035.

... Respondents in all W.Ps

Prayer in W.P.No.28371 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the Impugned Intimation in TNGST 0620015/2004-2005 dated 25.11.2021 from the files of the first respondent herein, quash the same.



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Prayer in W.P.No.28375 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the Impugned Intimation in TNGST 0620015/2005-2006 dated 25.11.2021 from the files of the first respondent herein, quash the same.

Prayer in W.P.No.28378 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the Impugned Intimation in TNGST 0620015/2006-2007 dated 25.11.2021 from the files of the first respondent herein, quash the same.

For Petitioner : Mrs.Aparna Nandakumar
(In all W.Ps)

For Respondents : Mr.C.Harsharaj
(In all W.Ps) Additional Government Pleader

COMMON ORDER

The petitioner is before this Court against three Intimations all dated **25.11.2021** issued to the petitioner for the Assessment Years 2004-2005, 2005-2006 and 2006-2007.

2. The above Impugned Intimations seek to deny refund of input tax credit debited by the petitioner as a pre-deposit pursuant to order dated **25.03.2015** in **W.P.Nos.8584, 8585 and 8586 of 2015**.



3. The petitioner had earlier suffered Assessment Orders dated **25.05.2012** wherein, the stand of the petitioner that no tax was payable by the petitioner on the freight and pumping charges collected for Ready Mix Concrete (RMC) sold and supplied by the petitioner. The stand of the petitioner is that post-sale activities was accepted by the Assessing Officer.

4. Assessment Orders for the Assessment Years 2004-2005, 2005-2006 and 2006-2007 were sought to be revised by issuance of Revised Notices dated **07.04.2014**, **05.02.2015**. The petitioner had replied to these notices on **12.02.2015** for these Assessment Years. Ultimately, by Revision Orders dated **18.02.2015**, the Assessing Officer/the first respondent herein confirmed the proposals in the Revised Notices dated **07.04.2014** and **05.02.2015**.

5. The petitioner thus challenged the Revision Orders dated **18.02.2015** before this Court in **W.P.Nos.8584, 8585 and 8586 of 2015**, which came to be partly allowed vide order dated **25.03.2015** by quashing the Revision Orders dated **18.02.2015** with the following observations:-

“5. The learned counsel for the petitioner submitted that pursuant to the notice issued by the respondent, the petitioner raised objection and sought time to attend the personal hearing and requested the respondent to grant



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personal hearing to explain with some more documents for the assessment years 2004-05, 2005-06 and 2006-07, without considering the reply made, the respondent passed the impugned order dated 18.02.2015 asking him to pay the taxes along with penalty. Hence, if an opportunity is given to the petitioner, they would be able to convince the respondent. The learned counsel for the petitioner further submitted that the petitioner is also agreed to pay 10% of the tax amount as determined in the impugned order dated 18.02.2015 and if three weeks time is given, they would co-operate to enable the assessing officer to complete the proceedings afresh.

6. Taking note of the facts and circumstances of the case, I direct the respondent to accept 10% of the tax amount as determined in the impugned order for the assessment years 2004-05, 2005-06 and 2006-07 which the petitioner has agreed to pay the same. If there is excess ITC lying with the respondent, the same can be adjusted towards future years. One more opportunity is given to the petitioner to putforth their objections and thereafter, the respondent shall pass appropriate orders on merits and in accordance with law.

7. The petitioner is directed to appear on 30.04.2015 before the respondent, on which date, the petitioner is entitled to make their verbal and written submissions, if any. In case the petitioner fails to avail this opportunity, the respondent is empowered to pass orders afresh on merits and in accordance with law based on the available records. If there is any excess amount with the department that need not be refunded and may be adjusted towards future years.

8. These writ petitions are disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.”



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6. There is no dispute that the petitioner had also complied with the conditions pursuant to Order passed by this Court on **25.03.2015** in the above mentioned writ petitions by depositing the amount by debiting in credit of duty from the input tax credit availed. Pursuant to the aforesaid Order dated **25.03.2015**, the petitioner had also filed reply dated **14.05.2015**.

7. During the interregnum, on **13.12.2018**, the Division Bench of this Court gave its decision in favour of the petitioner in petitioner's own cases for the Assessment Years 1999-2000 and 2000-2001 in **Tax Case (Revision) Nos.10 and 11 of 2013**. The Division Bench of this Court referred to a decision of the Hon'ble Supreme Court in **State of Karnataka and another Vs. Bangalore Soft Drinks (P) Ltd.**, (2000) 117 STC 413 (SC)/(2000) 10 SCC 531 and the decision of the Division Bench of this Court in **Ram Oxygen Private Limited Vs. Joint Commissioner (SMR) of Commercial Taxes**, (1999) 115 STC 629 and few other decisions and answered the question of law in favour of the petitioner.



8. Paragraphs 8 to 12 of the Order dated **13.12.2018** of the Division

Bench of this Court reads as follows:-

“8. Further, the first Appellate Authority found that the sale price on ex-works as per invoice on record is being credited to sale account as per books of accounts and the other charges to freight and unloading charges as per the books of accounts. Reference was made to the decision in the case of State of Karnataka v. Bangalore Soft Drinks (P) Ltd. reported in (2000) 117 STC 413 and the decision of the Division Bench of this Court in Ram Oxygen Private Limited v. Joint Commissioner (SMR) of Commercial Taxes [(1999) 115 STC 629]. Further, the first Appellate Authority relied on the decision of the Hon'ble Supreme Court in the case of Vinod Coal Syndicate reported in 73 STC 317, wherein, it was held that where the cost of freight was charged separately, that amount cannot be included in the taxable turnover of the assessee. Further, in STA No.1028 of 2004 dated 28.02.2004 in the assessee's own case, the Sales Tax Appellate Tribunal, Bangalore, held that in the facts and circumstances of the case, it is fallacious to draw conclusion that the selling price is inclusive of freight and pumping charges which is contrary to facts of the transaction as supported by documents as well as the provisions of the Act. After rendering the above finding, the first Appellate Authority held that the tax levied in the assessment order on RMC pumping charges and freight charges is illegal and therefore, liable to be set aside. Unfortunately, the Tribunal did not even make an attempt to consider as to whether the finding rendered by the first Appellate Authority was correct or not. We disapprove the manner in which the Tribunal has decided the assessee's case.

9. The learned Additional Government Pleader



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appearing on behalf of the respondent would vehemently contend that the decision in the case of Ram Oxygen Private Limited (supra) cannot be applied to the case on hand as the product dealt with by the said assessee was different from that of the product dealt with by the assessee in the case on hand.

10. In our view what is required to be seen from the judgment is the ratio decidendi which has been rendered by explaining the meaning of the word “sale price” as defined under the provisions of the Central Sales Tax Act, 1956. For better appreciation, we quote paragraph 9 of the judgment.

“9. It is clear from a reading of this definition that cost of freight or delivery or cost of installation is excluded from the sale price where they are separately charged. It has been found by the Joint Commissioner that the assessee had in fact separately charged for the amounts of freight and delivery. What has been excluded in the definition itself cannot be made a part of the sale price, on the basis of the definition of “Sale price” in another enactment. Moreover, the transportation, in this case was undertaken on behalf of the buyer.”

11. Thus, the law laid down in the above decision is that cost of freight or delivery or cost of transportation cannot be included in the sale price, where they are separately charged. In the instant case, as a matter of fact, the first Appellate Authority found that the freight charges, pumping charges have been separately shown in the invoices without including the same in the cost of the goods. Further, the purchase order also clearly says that the delivery is ex-RMC Works. Further, the Assessing Officer has not pointed out even a single instance of collection of consolidated amount and that the sale is completed only after delivery of RMC at the site of the customer and not even a single buyer was enquired and there



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was no material available with the Assessing Officer. Thus, we are of the firm view that the Tribunal committed a serious error in deciding the questions against the assessee.

12. For the above reasons, the appeals filed by the assessee are allowed and the substantial questions framed for consideration are decided in favour of the assessee. No costs.”

9. Following the Order of the Division Bench of this Court, the first respondent has passed separate Revision Orders all dated **14.09.2021** for the respective Assessment Years in which, the first respondent also ordered refund of the amount deposited by the petitioner from and out of its input tax credit during 2015-2016 pursuant to Order dated **25.03.2015** in **W.P.Nos.8584, 8585 and 8586 of 2006**.

10. Along with the aforesaid Revision Orders dated **14.09.2021**, the petitioner was also issued with Form-C as is contemplated under the provisions of the Tamil Nadu General Sales Tax (TNGST) Act, 1959 read with Rule 18AA(6) of the Tamil Nadu General Sales Tax (TNGST) Rules, 1959.

11. The first respondent has now referred to an Order of the second respondent dated **17.11.2021**, to deny the refund of the amounts deposited by



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the petitioner pursuant to the order passed on **25.03.2015** in **W.P.Nos.8585, 8585 and 8586 of 2006**.

12. The said communication dated **17.11.2021** bearing **Ref.No.Rc.1521131/3137/2021 B5** is purportedly based on the Circular issued by the then Principal Secretary-cum-Commissioner of Commercial Taxes bearing **Circular No.05/2015, Ref.No.MM3/15440/2013** dated **06.02.2015** issued pursuant to the Order passed by this Court in **W.P.No.7094 of 2013** dated **08.04.2013** whereby, this Court had declined the right of an assessee namely M/s.KSB Pumps Limited to pre-deposit the amount under Section 51 of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006 from and out of the input tax credit.

13. Learned counsel for the petitioner would submit that there is no merits in the Revision Notices as the issue to levy tax on the freight charges and pumping charges for the sale and supply of Ready Mix Concrete (RMC) has been answered on merits by the Division Bench of this Court in **Tax Case (Revision) Nos.10 and 11 of 2013** vide its Order dated **13.12.2018**, which also has been accepted by the order of the first respondent for the respective



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Assessment Years dated **14.09.2021**.

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14. Arguing further, the learned counsel for the petitioner would submit that if the input tax credit determined by the Assessing Officer for a year exceeds tax liability for that year, the excess was to be adjusted against any outstanding tax due from the dealer.

15. It is therefore submitted that on a harmonious reading of Section 19(17) read with Section 88(3)(b) and Section 88(4) of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006, the amounts deposited by the petitioner pursuant to Order dated **25.03.2015** in **W.P.Nos.8584, 8585 and 8586 of 2006** ought to have been refunded back. It is further submitted that any amount that has been paid whether in cash or by deposit in the input tax credit was to comply with the requirements of Rule 18AA(6) of the Tamil Nadu General Sales Tax (TNGST) Rules, 1959.

16. Specifically, the learned counsel for the petitioner would submit that as per Rule 18-AA(6) of the Tamil Nadu General Sales Tax (TNGST) Rules,



1959, after making the final assessment under sub-rule (5) or revision of assessment under Rule 18-A, the assessing authority shall examine whether any and, if so, what amount was due from the dealer towards tax liability after deducting any amount paid in advance. It is submitted that if any amount is found to be due from the dealer after the final assessment or revision of assessment, the assessing authority shall serve upon the dealer a notice in Form B-3 and the dealer shall pay the sum so demanded at the time and in the manner specified in the notice. If the amount due on the final assessment or revision of assessment is lower than the amount already paid and if there are any arrears of amount due under the Act from the dealer, the officer has to serve upon the dealer a notice in Form-C notifying the dealer of the adjustment of excess amount towards such arrears. If there are no arrears of amount due under the Act from the dealer, or if after such adjustment there is still an excess, the officer shall serve upon the dealer a notice in Form-C for refunding the excess amount and along with such notice, he shall also send to the dealer a voucher for claiming refund of that amount from the treasury. If the amount due on final assessment or revision of assessment is exactly equal to the amount paid in advance, the assessing authority shall inform the dealer what the final assessment or revision assessment is, and that no further amount is due from



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him towards it.

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17. Defending the stand of the respondents, the learned Additional Government Pleader for the respondents would submit that the writ petitions are premature and are liable to be dismissed. It is submitted that there is no final determination and therefore, on this ground, the writ petitions are also liable to be dismissed.

18. That apart, it is submitted that the order passed by this Court on **25.03.2015** in **W.P.Nos.8584, 8585 and 8586 of 2006** is categorical. It is submitted that if there was any excess amount with the department, it need not be refunded and can be adjusted only towards future tax liability.

19. That apart, it is submitted that pre-deposit of 10% from and out of the input tax credit cannot be termed as proper compliance of the order of this Court dated **25.03.2015** as the dispute pertains to the tax liability of the petitioner under TNGST Act, 1959 and the input tax credit and its availability was made available under the Tamil Nadu Value Added Tax (TNVAT) Act,



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2006 with effect from **01.01.2007**.

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20. It is therefore submitted that the amount debited by the petitioner cannot be refunded back as it is clearly contrary to the Circular dated **06.12.2015** bearing **Circular No.05/2015, Ref.No.MM3/15440/2013** dated **06.02.2015** of the Principal Secretary/Commissioner of Commercial Taxes pursuant to Order dated **08.04.2013** in **W.P.No.7094 of 2013**.

21. That apart, it is submitted that at best, the petitioner can request only for adjustment of amount and not for refund of the amounts that was paid by the petitioner. Finally, the learned Additional Government Pleader for the respondents would submit that Section 19(17) of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006 also contemplates only adjustment and not refund of the amount that was paid and therefore, the amount that was paid towards the input tax credit that was available during 2015-2016 can be adjusted towards tax liability of the petitioner for the succeeding years or for the succeeding period and certainly cannot be refunded back in cash. Finally, the learned Additional Government Pleader for the respondents has reiterated the submission that the input tax credit was not available for discharging the tax



liability that crystallized under the provisions of the Tamil Nadu General Sales Tax (TNGST) Act, 1959.

22. By way of rejoinder, the learned Additional Government Pleader for the respondents once again drew attention to Section 88(3)(b) of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006.

23. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

24. Ready Mix Concrete (RMC) manufactured in the plants of the petitioner were transported to the sites of the customer by the petitioner.

25. The petitioner considered freight and pumping charges collected from its customers as post sale activity and therefore did not include the same into “taxable value” of the Ready Mix Concrete (RMC). Earlier, Assessment Orders dated **25.05.2012** were also passed accepting the stand of the petitioner that these charges were not includible into the taxable value of Ready Mix Concrete



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(RMC) supplied.

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26. A dispute arose on account of non-inclusion of the freight and pumping charges collected by the petitioner from its customers into taxable value of the Ready Mix Concrete (RMC) manufactured and supplied by the petitioner to its customers.

27. Revision Notices were issued to the petitioner on **07.04.2014**, **05.02.2015**. Thereafter, Revision orders were also passed by the first respondent on **18.02.2015** whereby Assessment Orders dated **25.05.2012** which were revised by including these two charges into the taxable value of Ready Mix Concrete (RMC) supplied at sight of the customer. At that point of time, the petitioner was already agitating the same issue before the Appellate Forums for the Assessment Year 1999-2000 and 2000-2001.

28. Revision orders passed by the first respondent on **18.02.2015** were challenged in **W.P.Nos.8584, 8585 and 8586 of 2015**. These Writ Petitions were disposed by this Court vide its Order dated **25.03.2015** to pass a fresh



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order. The Petitioner was however asked to deposit amounts by the Court in its Order dated **25.03.2015**.

29. Amounts were also deposited by the petitioner pursuant to the directions of this Court dated **25.03.2015** in **W.P.Nos.8584, 8585 and 8586 of 2015**. However, the deposit was made by the petitioner by debiting amounts from its Input Tax Credit availed under the Tamil Nadu Value Added Tax (TNVAT) Act, 2006.

30. Meanwhile, the issue regarding inclusion/non-inclusion of the charges into the taxable value of the Ready Mix Concrete (RMC) was answered in favour of the petitioner by this Court in **Tax Case (Revision) Nos.10 and 11 of 2013** on **13.12.2018**.

31. Following the order of this Court in **Tax Case (Revision) Nos.10 and Tax Case (Revision) No.11 of 2013** on **13.12.2018**, three separate Revision Orders dated **14.09.2021** were also passed dropping the demand. In the Revision Orders passed on **14.09.2021**, it was concluded that the petitioner was also entitled for refund of pre-deposit made for the respective Assessment Orders for a sum of **Rs.29,15,629/-**, **Rs.35,69,351/-** and **Rs.1,17,781/-**. These



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Revision Orders passed on **14.09.2021** also accompanied Form 'C' which is a Refund Order.

32. The amount of pre-deposit debited by the petitioner in the returns filed by the petitioner for the respective months for the Assessment Years 2015-2016 from its input tax credit claimed under the Tamil Nadu Value Added Tax regime is now sought to be denied vide Impugned Intimations all dated **25.11.2021** invoking the **Circular No.05/2015/MM3/15440/2013** dated **06.02.2015**. The Court is of the view that refund of the aforesaid amounts cannot be denied, since the substantial questions of law now has been answered in favour of the petitioner in terms of the order passed in **Tax Case (Revision) Nos.10 and 11 of 2013** dated **13.12.2018**.

33. Further, having accepted the pre-deposit of input tax credit through a debit in the VAT Returns and having considered the Revision Orders passed on **14.09.2021**, it is not open for the Commercial Tax Department now to turn around and deny the refund stating that the petitioner had not complied with the Order dated **25.03.2015** passed by this Court in **W.P.Nos.8584, 8585 and 8586 of 2015**.



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34. Further, during the interregnum, the Tamil Nadu Value Added Tax (TNVAT) Act, 2006, stood repealed and replaced by the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017 with effect from **01.07.2017**. Further, the petitioner could not have transitioned the amounts after GST enactments which was rolled out with effect from **01.07.2017**. The amount that was debited towards pre-deposit by the petitioner under the VAT regime towards the purported tax liability under the Tamil Nadu General Sales Tax (TNGST) Act, 1959, has to be either refunded back or allowed to be adjusted towards the TNGST liability in accordance with the provisions of the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017. However, there is no scope for allowing the petitioner to claim input tax credit.

35. As per Section 142(6)(a) and (b) of the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017, the amounts paid as pre-deposit has to be refunded back. Section 142(6)(a) and (b) of the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017 read as under:-



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of this order.

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38. In the result, these Writ Petitions are allowed with consequential reliefs. No costs.

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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To

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