IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **10.12.2024**

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.36991 of 2024
and
W.M.P.Nos.39951 & 39952 of 2024

N.J.Granite India Pvt.Ltd.,
Rep.by its Authorized Signatory
Manish Maheswari ... Petitioner

Vs.

The Assistant Commissioner (ST)(FAC),
Hosur (South-III),
Hosur 635 109. … Respondent

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorari calling for the connected records pertaining to the impugned proceedings of the respondent made in TIN : 33753366937/2014-15 dated 19.06.2024 and quash the same 2024 as being contrary to order dated 28.02.2023 made in W.A.Nos.1094 & 1095 of 2015 in the case of Eastman Exports Global Clothing (P) Ltd., vs. Assistant Commissioner.

For Petitioner : M/s.Manoharan.S.Sundaram

For Respondent : M/s.Amirta Dinakaran
Govt.Advocate (T)

ORDER

This writ petition has been filed challenging the impugned order passed by the respondent bearing Reference 33753366937/2014-15 dated 19.06.2024.

2. It is the case of the petitioner that he is engaged in the business of manufacturing granite slabs from the rough block stones and it is registered under Tamil Nadu Value Added Tax Act, 2006. During the relevant period, the petitioner had filed its return and paid appropriate taxes. On 02.12.2015, an inspection was conducted in the business premises of the petitioner by the Enforcement Wing Officials and consequently they informed that the petitioner's claim or availment of input tax credit is to be reversed in respect of " manufacturing/invisible loss" in terms of Section 19(9)(iii) of the TNVAT Act. It is needless to mention that certain amount of loss of input is an inevitable on the part of the petitioner's manufacturing process. In other words, without manufacturing//invisible loss the desired end product could not be

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

3. It is further submitted that the respondent on the basis of the proposal sent by the enforcing wing official, the respondent passed an assessment order dated 31.10.2016. As against the assessment order dated 31.01.2016, the petitioner filed a rectification petition under Section 84 of the Tamil Nadu Value Added Tax Act, 2006. However, the respondent did not pass any order on the said petition , the petitioner filed a writ petition in W.P.Nos.8581, 8583 and 8584 of 2022 before this Court and the same was was disposed on 07.04.2022. In pursuant to the order dated 07.04.2022, the respondent has passed the impugned order dated 19.06.2024, wherein, the petitioner adopted 10% as wastage or invisible loss as against 40% adopted in the original order dated 31.01.2016.

4. By virtue of the impugned order dated 19.06.2024, the respondent

levied the tax of Rs.1,22,188/- by reversing the ITC on the account of invisible loss. It is relevant to mention that the then Commissioner of Commercial Taxes issued a circular dated 20.10.2011, directed the subordinates of the commercial taxes to reverse the ITC on account of manufacturing loss or invisible loss in terms of Section 19(9) of the TNVAT Act, 2006 and the same was challenged before this Court and by order dated 28.02.2023 made in W.A.Nos.1094, 1095 of 2015 and etc., batch filed by the Eastman Exports Global Clothing (P) Ltd. vs. The Asst.Commissioner (CT), Tiruppur, the Hon'ble Division Bench set aside the orders of assessment the same in so far as manufacturing /invisible loss is set aside. In view of the same, the impugned order dated 28.02.2023 is contrary. Hence, the petitioner has come forward with the present writ petition.

5. The learned counsel appearing for the petitioner submitted that the respondent has passed the impugned order dated 19.06.2024 without considering the reply filed by the petitioner and no opportunity of personal hearing was granted before passing of the impugned order. The learned counsel further submitted that the issue is squarely covered by the Judgment of the Hon'ble Division Bench of this Court in W.A.No.1094 of

2015 and etc., batch dated 28.02.2023 and the matter may be remitted back to the respondent to consider the case of the petitioner in the light of the judgment of the said writ appeal.

6. Heard the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent and also perused the materials available on records.

7. Considering the facts and circumstances of this case, the impugned order passed by the respondent dated 19.06.2024 is set aside and the case is remitted back to the respondent for a fresh consideration. The respondent, Assistant Commissioner (ST)(FAC) is directed to consider the case of the petitioner in the light of the Judgment passed by the Hon'ble Division Bench of this Court in W.A.No.1094 of 2015 and etc., batch dated 28.02.2023 and pass orders on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

J.SATHYA NARAYANA PRASAD,J.

kkd

8. This Writ Petition is disposed of with the aforesaid observation and direction. No costs. Consequently, connected miscellaneous petitions are closed.

10.12.2024

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

To

The Assistant Commissioner (ST)(FAC),
Hosur (South-III),
Hosur 635 109.

W.P.No.36991 of 2024