IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WP No.12294 of 2021
and
WMP No.13080 of 2021

Tvl.Schaeffler India Ltd.,
(previously Luk India Private Ltd)
Represented by its Manager,
PB No.20, Survey No.950 Rayakottah Road,
Hosur, Krishnagiri District -635109 ... Petitioner

versus

The Assistant Commissioner (ST),
Hosur South-III ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari, calling for the records of the order of the respondent dated 16.02.2021 in TIN:33663361603/2016-2017 and quash the same and pass orders.

For the Petitioner :Mr.Adithya Reddy

For the Respondents :Ms.Amrita Dinakaran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 16.02.2021 on the premise that the assessment order invoking Section 19(9)iii of TNVAT Act reversing input tax credit on manufacturing loss is contrary to the Division Bench order of this Court and also non-speaking inasmuch as the objections filed by the petitioner has not even been considered.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the manufacture of Diaphragm Spring, Cover assemblies, Clutch plate etc. During the relevant period viz., 2016-2017, the petitioner had filed its return and paid appropriate taxes and availed eligible input tax credit. While so, a notice dated 02.11.2020 came to be issued proposing to reverse input tax credit at 1% on the input tax credit of Rs.11,87,91,035/- by invoking Section 19(9)(iii) of the TNVAT Act. In response to the same, the petitioner submitted its reply dated 03.12.2020 *inter alia* stating that there is no manufacturing loss and had also set out the

manufacturing process in detail. The relevant portion is extracted hereunder:

> *We, manufacture Diaphragam Spring, Cover assemblies, Driven Plates and Double Clutches. Clutch is an assembly of components, primarily made from pressed components, castings, forgings and friction materials. The critical components such as clutch cover housing, diaphragm spring and driven plate components are made in house. Coil springs, friction facings and hardware items are bought from reliable sources. So, basically, clutches are assembly of various components, we do assemble of components procured from various suppliers for assembling our final product, this was also explained during assessment proceedings to the concerned officer and it was also accepted, hence there is no manufacturing loss as such in this process.*
>
> *Further we wish to point that the legislature never intended manufacturing loss to be part of loss under Section 19(9)(iii) of the Act. What was intended was loss of inputs due to reasons other than manufacturing loss. This is because the value of all inputs that are used in manufacture are added to the value of final product and tax is paid thereon. Denying ITC for such inputs amounts to double taxation.*

3. It was also submitted that in any view, where inputs are used in manufacture and necessary for the end product, any loss which is inevitable/unavoidable/inherent part of such manufacturing process, whether would attract Section 19(9) of the TNVAT Act, warranting reversal of credit, on the ground that inputs are not continued in the end product, has been considered by a Division Bench of this Court in the case of ***Eastment Exports Global Clothing (P) Ltd. Vs The Assistant Commissioner (CT) and Others*** *in WA No.1094 of 2018 etc. batch dated 28.02.2023* and it was held as under:

> *On analysis of the scope and interplay between Sections 19(2)(ii) and 19(9) of the TNVAT Act, precedents dealing with manufacturing/invisible loss and the rules of construction referred above we find that Section 19(9) of the TNVAT Act would not get attracted to manufacturing/invisible loss which is inevitable and inherent part of manufacture and thus covered by Section 19(2)(ii) of the TNVAT Act. However, this would not preclude the assessing authority from enquiring if the claim of use of input in manufacture is genuine or otherwise.*

4. It is submitted by the learned counsel for the petitioner that while the proposal was to dis-allow/reverse input tax credit at 1%, however, the order of assessment reduces it to 0.1%, without assigning any reason.

5. Learned Government Advocate for the respondent would submit that they would re-do the assessment, keeping in mind the law laid down by this Court in the case of *Eastment (supra)*, after affording the petitioner a reasonable opportunity of hearing and shall pass a speaking order.

6. Recording the above, the writ petition stands disposed of. There shall be no order as to costs Consequently, connected miscellaneous petition is closed.

27.02.2025

Index : Yes/No
Neutral Citation : Yes/No
mrn

To:
The Assistant Commissioner (ST),
Hosur South-III

MOHAMMED SHAFFIQ, J.

(mrn)

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