IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.07.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.27987, 27995 & 27991 of 2024
and
W.M.P.Nos.30552, 30540, 30541, 30545, 30546 & 30551 of 2024

Tvl.Graso Garments
No. 365/2, Nochipalayam Road,
A.B. Nagar, Tiruppur-641 605
rep. by its Partner Mr.G.R.Arun Prakash

... Petitioner in all petitions

Vs.

1. The Deputy Commissioner Appeal (ST)
Coimbatore (Erode Camp) Commercial Taxes
Building, No.1, Brough Road, Erode-638 001.

2. The Assistant Commissioner (ST)
Rural II Assessment Circle, Tiruppur

... Respondents in all petitions

Common Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st Respondent leading to issuance of Impugned Order dated 10.07.2024 (vide M.P. No. 04/2024 (2015-16), (vide M.P. No. 03/2024 (2014-15) &

(vide M.P. No. 02/2024 (2013-14) and quash the same and consequentially direct the 1st Respondent to restore the Appeal filed by the Petitioner (vide M.P. No. 04/2024 (2015-16), (vide M.P. No. 03/2024 (2014-15) & (vide M.P. No. 02/2024 (2013-14) on the file of 1st Respondent and decide the same on merits

For Petitioner in all petitions	:	Mr.Kmc.Arunmokan
For Respondent in all petitions	:	Mr.T.N.C.Kaushik, AGP

COMMON ORDER

These writ petitions have been filed challenging the impugned orders dated 10.07.2024 passed by the respondent.

2. The learned counsel for the petitioner would submit that in these cases, the only issue is as to whether the ITC, which was availed in the ECL, can be utilised for the payment of pre-deposit while filing the appeal against the assessment order. Further, he would submit that the said issue involved in the present Writ Petitions, has been squarely

covered by the order of this Court, dated 04.02.2020 passed in W.P.No.27346 of 2015, wherein, this Court has categorically held in paragraphs 2 to 13 as under:

> *2.The petitioner wanted to pre-deposit 25% of the tax from and out of Input Tax Credit available with it. The appeals filed by the petitioner were summarily returned with a memo dated 14.08.2015 followed by two notices both dated 21.08.2015 for the respective Assessment Years.*
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> *3.It has been stated that as per the decision of this Court in **Tvl. KSB Pumbs Ltd. Vs. Deputy Commissioner (CT), Fast Track Assessment Circle – II, Coimbatore, (2014) 68 VST 244 (Mad)**, the petitioner was required to pre-deposit 25% of the amount only in cash and adjustment from the Input Tax Credit was not permissible for the aforesaid purpose.*
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> *4.The learned counsel for the petitioner submits that the decision of this court in **Tvl. KSB Pumbs Ltd. Vs. Deputy Commissioner (CT), Fast Track Assessment Circle – II, Coimbatore, (2014) 68 VST 244**, cannot be cited to hold that the petitioner was not*

entitled to pre-deposit the amount out of Input Tax Credit lying unutilised for the purpose of Section 51 of the TNVAT Act, 2006 as in the facts of the said case the assessee had attempted to pre-deposit the amount out of disputed Input Tax Credit which itself was subject matter of the appeal. Learned counsel for the petitioner for the submits that in the facts of the present case that is not the issue and therefore denial of adjustment of input tax credit for the purpose of pre-deposit was not justified.

5.The learned counsel for the petitioner further submits that Section 51 of the TNVAT Act, 2006 does not contemplate pre-deposit only in cash. He further submits that once credit has been validly, there cannot be any restrictions. He further submits that even if the Input Tax Credit availed is provisional, it cannot be provisional at all times to come. He submits that as long as there is no proceeding to deny such credit, petitioner should be allowed to utilise the same for the purpose of pre-deposit of tax under Section 51 of the TNVAT Act, 2006.

6.Per contra, the learned Government Advocate for the respondents submits that pre-deposit has to be only in cash under Section 51 of the TNVAT Act, 2006. He further submits that as per the decision of this court in ***Tvl. KSB Pumbs Ltd. Vs. Deputy Commissioner (CT), Fast Track Assessment Circle – II, Coimbatore, (2014) 68 VST 244****, pre-deposit cannot be permitted by way of adjustment of the input tax credit lying unutilised.*

7.I have considered the arguments advanced on behalf of the petitioner and the respondents.

8.Section 19 (1) permits a registered dealer to avail Input Tax Credit of the tax paid on the input purchased on payment of tax from a registered dealer within the State. As per section 19 (2) of the TNVAT Act, 2006, credit shall be allowed for the purpose specified therein:-

> *Section 19 – Input Tax Credit- (2) Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of –*
>
> *(i) re-sale by him within the State; or*
>
> *(ii) use as input in manufacturing or processing of goods in the State; or*

> *(iii) use as containers, labels and other materials for packing of goods in the State; or*
>
> *(iv) use as capital goods in the manufacture of taxable goods.*
>
> *(v) sale in the course of inter-State trade or commerce falling under sub-section (1) of section 8 of the Central Sales Tax Act, 1956.*
>
> *(vi) Agency transactions by the principal within the State in the manner as may be prescribed*

9.Thus, Input Tax Credit is not intended for being utilised for payment of pre-deposit. At the same time, as per Section 19(18) of the TNVAT Act, 2006, excess input credit, if any, after adjustment under Sub-Section shall be carried forward for the next year or refunded in the manner as may be prescribed. As per Rule 10(10)(b) of the Tamil Nadu Value Added Rules, 2007, in case where Input Tax Credit as determined by the Assessing Officer for any registered dealer, for a year, exceeds the tax liability for that year, it may be adjusted and the excess Input Tax Credit may be adjusted against any arrears of tax or any other amount due from him. If there are no arrears under the Act, or after adjustment there is still an excess of Input Tax Credit, Assessing Authority shall serve Form P upon such *dealer. Rule 11 of the aforesaid Rule contemplates the issue of reference of such amounts.*

10.Thus, excess Input Tax Credit is to be refunded back if after adjustment there is balance available. Therefore, it is evident that if the amount of credit can be refunded, they can also be adjusted towards pre-deposit of the tax liability for the purpose of Section 51 of the TNVAT Act, 2006. It may be useful to also refer to some of the decisions rendered in the context of Section 35F of the Central Excise Act, 1944. In the context of the aforesaid provision which also contemplats pre-deposit of amount, the Jharkhand High Court, Allahabad High Court, Karnataka High Court and Gujarat High Court have taken a view that such pre-deposit can be allowed for the purpose of Section 35F of the Central Excise Act, 1944.

11.A Division Bench of Jharkhand High Court in case of ***Akshay Steel Works Pvt. Ltd. Vs. Union of India, 2014 (304) ELT 518*** *and a Single Judge of Allahabad High Court in case of* ***India Casting Company Vs. CEGAT, New Delhi, 1998 (104) ELT 17*** *and a decision of the Karnataka High Court in* ***Union***

of India Vs. Vikrant Tyres Ltd., 1999 (35) RLT 427 (Kar) *have recognised pre-deposit through adjustment in Modvat/Cenvat Credit Account.*

12.In paragraphs 7 and 8, the Gujrat High Court has taken a view in **Cadila Health Care Pvt. Ltd. Vs. Union of India, 1998(104)ELT 17(All)**, *in its order dated 26/06/2018 has held as follows:-*

> *7.Coming to the central issue, the Commissioner does not appear to be correct in his stand. Essentially, credit in an assessee'scenvat account is a duty he has already suffered which he can encash for specified purposes subject to conditions laid down under the Rules. As observed by Division Bench of Jharkhand C/SCA/1981/2018 ORDER High Court in case of Akshay Steel Works Pvt. Ltd (supra) there is nothing in the Rules preventing an assessee from availing such cenvat credit for the purpose of pre-deposit. Similar view was taken by the learned Single Judge of Allahabad High Court in case of India Casting Company (supra). Petitioners had also pointed out that even departmental authorities have been accepting such formula.*
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> *8. In the result, impugned communications are quashed. Pre-deposit made by the petitioners by availing cenvat credit shall be accepted for the purpose of*

section 35F of the Central Excise Act. The appeals shall be heard by the Commissioner on merits.

13.In the light of the above discussion, I am inclined to accept the contention of the petitioner that for the purpose of pre-deposit under Section 51 of the TNVAT Act, 2006 an assessee can utilise the excess Input Tax Credit provided, the aforesaid Input Tax Credit itself is not the subject matter of the dispute or where any notice has been issued to deny such tax credit as was done in the case of ***Tvl. KSB Pumbs Ltd. Vs. Deputy Commissioner (CT), Fast Track Assessment Circle – II, Coimbatore, (2014) 68 VST 244 (Mad)****. To deny such right would amount to improper denial of right of appeal to an assessee.*

4. Therefore, the learned counsel for the petitioner would submit that the above said order will hold good for the present Writ Petition also and hence, prayed to dispose of the Writ Petition. The learned Additional Government Pleader appearing for the respondent would fairly accede to the same.

5. Considering the submissions made by the learned counsel for the petitioner and in view of the aforesaid order dated 04.02.2020 passed in W.P.No.27346 of 2025, this Court is inclined to allow these petitions.

6. Accordingly, the present Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.07.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

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