

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On

20.02.2020

Pronounced On

19.05.2020

CORAM

THE HON-BLE MR.JUSTICE C.SARAVANAN

W.P.No.31044 of 2013

and

M.P.Nos.1 & 2 of 2013

Tvl.M.R.Motor Company,

Represented by its Managing Partner,

Thiru N.Rajagopal,

19, Chindamani Commercial Complex,

D.D.Road, Salem 636 001.

... Petitioner

Vs.

The Assistant Commissioner (CT), (FAC),

Salem Town (South) Circle,

Salem.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the files of the respondent in Rc.No.366/2013/A1 dated 12.09.2013 and quash the same as being without jurisdiction and authority of law and contrary to the principle of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.G.Dhanamadhri, G.A.

O R D E R

In this Writ Petition, the petitioner has challenged the impugned order dated 12.09.2013 in RC.366/2013/A1, passed by the respondent.

2. The petitioner is a dealer of Motor Vehicles who had claimed a refund of excess Input Tax Credit in terms of Sections 19(17) & 19(18) of the TNVAT Act, 2006 read with Rule 10(10)(a) & (b) and Rule 11 of the TNVAT Rules, 2007.

3. The petitioner filed a refund claim on 09.11.2011 and requested the respondent to refund a sum of Rs.46,03,026/ being accumulated Input Tax Credit for the Assessment Years from 2006/2007 upto 2009/2010.

4. The petitioner thereafter filed Writ Petition before this Court in W.P.No.18839 of 2013, to consider its representation for refund of the accumulated credit which had by then purportedly increased to Rs.1,06,72,081/;. The said Writ Petition was disposed by an order dated 05.08.2013. It directed the respondent to consider the representations of the petitioner and pass orders on merits in accordance with law.

5. The petitioner thereafter filed another representation dated 15.08.2013 and requested the respondent to refund the accumulated credit of Input Tax Credit.

6. By the impugned order dated 12.09.2013, the respondent has rejected the refund of the Input Tax Credit with the following observations:;

2) As explained above the dealers have carried forward the closing balance of the Input Tax Credit Accumulation as on 31.03.2012 to the next year according to their Form-I returns filed for the months of April 2012 & then to the next year also for the months of April 2013 continuously and adjusting the output tax dues till the month of July 2013. Accordingly the closing balance of the Input Tax Credit Accumulation on 31.03.2012 has since been merged with the Input Tax Credit Claim and Adjustment for Output tax due till the month of July 2013. Hence the closing balance of Input Tax Credit as shown in March 2012 cannot be refunded.

3) I therefore finally after verification of the all records and guidelines stipulated in the TNVAT Act, 2006 and TNVAT Rules, 2007, reject the petition filed by Tvl.M.R.Motor Company, No/19,

Chindamani Commercial Complex, D.D.Road, Sales~1, as per reference 1st cited requesting a refund of Rs.1,06,72,081.00 towards Input Tax Credit Accumulation on 31.03.2012.

7. Pending disposal of the present Writ Petition, the Tamil Nadu Value Added Tax Act, 2006 was replaced with Tamil Nadu Goods and Service Tax Act, 2017.

8. The respondent has filed a communication dated 04.02.2020 in bearing reference No.RC.366/2013/A1. It has been clarified that closing Input Tax Credit of the Petitioner as on 30.06.2017 was Rs.1,05,30,257/~. The petitioner has also transited the aforesaid credit under TNGST by filing Form GST TRAN~l and that no set off has been made by the petitioner.

9. It is stated that the petitioner is still in business and is having valid registration in GSTIN:33AALFM0921B1ZW under TNGST Act, 2017 and that it is regularly filing the returns under TNGST Act, 2017.

10. The question that arises for consideration is whether the petitioner was entitled to refund of Input Tax Credit in terms of Section 19(17) and 19(18) of the TNVAT Act, 2006 and whether the Department was justified in disallowing the refund of claim on the ground that the petitioner was still in business and was adjusting the amount regularly.

11. The second issue that arises for consideration is whether in the light of changed scenario after the implementation of TNGST Act, 2017, the petitioner is entitled to refund.

12. I have considered the arguments advanced by the learned counsel for the petitioner and learned Government Advocate appearing for the respondent. The provisions relating to adjustment and refund of Input Tax Credit is specified in Sections 19(17) and 19(18) of the TNVAT Act, 2006.

13. As per the Sub~Clause (17) to Section 19, if the Input Tax Credit determined by the Assessing Authority for a year exceeds the tax liability for that year, the excess may be adjusted against any outstanding tax due from the dealer.

14. As per Sub~Clause (18) to Section 19, the excess Input Tax Credit, if any, after adjustment under Sub~Section (17), shall be carried forward to the next year or refunded, in the manner as may be prescribed.

15. Rule 10 of the TNVAT Rules, 2007 prescribes the manner of refund. As per Rule 10(10)(a) of the TNVAT Rules, 2007, in case where tax paid during the month exceeds the output tax payable, the Input Tax Credit has to be carried forward to the next month. However, as per Rule 10(10)(b) of the aforesaid Rules, where the Input Tax Credit determined by the Assessing Authority exceeds the tax liability for that year, a dealer may just the excess Input Tax Credit against any tax arrears or any other amount due. Any other amount due can be adjusted towards any tax arrears only.

16. An Assessing Authority was bound to serve a notice in Form P to the dealer if after such adjustment there was still excess of Input Tax Credit. Form P is the prescribed format for refund of excess Input Tax Credit to a dealer after such adjustment.

17. Thus, as per the Rules prescribed, excess of Input Tax Credit has to be refunded back to the dealer. There was no provision for carrying forward of such Input Tax Credit for adjustment of tax liability for the subsequent period.

18. Therefore, merely because the petitioner was a going concern by itself did not mean that the petitioner was not entitled to such refund of the excess of Input Tax Credit which the petitioner accumulated over a period of time.

19. The opening balance of the Input Tax Credit lying unutilised on the 1st day of the Assessment Year could be 1st adjusted only towards any tax outstanding due of the dealer for the previous Assessment Year. After such adjustments, the Rule enjoins the Assessing Officer to mandatorily refund the excess Input Tax Credit to the dealer.

20. If the amount lying unutilised after due adjustment were refunded by the respondent then and there as was required under the provisions of the TNVAT Act, 2006, the question of petitioner being forced to transit credit would not have arisen. In this case, the petitioner has merely continued to accumulate the credit and adjust the amount.

21. Merely because the TNVAT Act, 2006 was substituted with Tamil Nadu Goods and Service Tax Act, 2017 with effect from 1.7.2017 by itself did not mean that the petitioner would be entitled to refund merely because the petitioner filed Form Transfer#126;1.

22. The petitioner cannot be found fault with. It did not mean that the petitioner was not entitled to refund of the accumulated Input Tax Credit which was lying unutilised after due adjustment.

23. In this connection, I am inclined to refer to the following passage from the decision of the Honable Supreme Court in Unichem Laboratories Ltd. Vs. CCE, (2002) 7 SCC 145:#126;

12. For the aforementioned reasons, we are of the view that denial of benefit of the notification to the appellant was unfair. There can be no doubt that the authorities functioning under the Act must, as are in duty bound, protect the interest of the Revenue by levying and collecting the duty in accordance with law \square no less and also no more. It is no part of their duty to deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly.

24. The above passage squarely applies to the facts of the present case.

25. Therefore, I am of the view that the impugned order passed by the respondent cannot be sustained and same is liable to be quashed with consequential direction to refund the amount lying unutilised after adjustment at the beginning of each financial year.

26. This Writ Petition is allowed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

19,05.2020

Index : Yes/No

Internet : Yes/No

arb / jen

To

The Assistant Commissioner (CT), (FAC),

Salem Town (South) Circle,

Salem.

C.SARAVANAN, J.

jen

Pre~Delivery Order

in

W.P.No.31044 of 2013

and

M.P.Nos.1 & 2 of 2013

19.05.2020