

IN THE HIGH COURT OF JUDICATURE OF MADRAS**RESERVED ON : 18.08.2020****PRONOUNCED ON : 02.09.2020****CORAM:****THE HONOURABLE MR. JUSTICE M.S. RAMESH****W.P.Nos.38488 to 38493 of 2015****In W.P.No.38488 of 2015**

M/s.Sri Ranganathar Valves Private Limited,
rep., by Managing Director,
12/45, Thadagam Road,
Edayarpalayam (PO)
Coimbatore – 641 025.

...Petitioner

Vs.

The Assistant Commissioner (CT) (FAC)
Velandipalayam Assessment Circle,
Coimbatore.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent herein in TIN No.33296204731/2014-15 and to quash the order dated 30.10.2015 passed therein insofar as it reverses the Input Tax Credit claimed by the petitioner to the extent of Rs.22,54,760/- and direct the respondent to refund the said sum of Rs.22,65,760/- to the petitioner herein.

For Petitioner : Mrs.Hema Muralikrishnan

For Respondent : Mr.ANR.Jayaprathap, SGP (T)

COMMON ORDER

With the consent of both the parties, the present Writ Petitions are heard through Video Conferencing on 18.08.2020.

2. The above Writ Petitions relate to restriction of the amount of Input Tax Credit (ITC) claimed in Form W for the months of December 2013 to May 2014 for separate orders for every month. The restriction of the amount of Input Tax Credit has been done predominantly on the head of (a) Prior sufferance of Taxes; (b) ITC on reversal on wastage; and (c) Ineligible claim of ITC on goods.

3. Insofar as the restriction of the amount for prior sufferance of taxes, the Assessing Officer was of the view that some of the sellers from whom the petitioner had purchased the goods had not paid tax to the Government. This issue has been dealt with in the case of **Assistant Commissioner (CT), presently Thiruverkadu Assessment Circle, Kolathur, Chennai Vs. Infiniti Wholesale Ltd.,** reported in **[2017] 99 VST 341 (Mad)**, wherein it has held that Input Tax Credit cannot be disallowed on the ground that the seller has not paid tax to the Government, when the purchaser is able to prove that the seller has collected tax and

issued invoices to the purchaser. As such, restriction of the amount of Input Tax Credit on this ground, cannot be sustained and requires re-consideration.

4. Insofar as the amount of restriction of Input Tax Credit claim wastages is concerned, this Court in the case of **M/s. Shri Ranganathar Valves Private Limited Vs. Assistant Commissioner (CT), (FAC), Velandipalayam Assessment Circle, Coimbatore** in the order passed in W.P.Nos.41670 to 41680 of 2016 had held as follows:-

*"7. Firstly, with regard to reversal of input tax credit claim on wastage under Section 19(9) of the State Act, under which, there are two subsidiary issues namely invisible loss and visible loss, the respondent adopted a percentage of 5% and 1% respectively. The correctness of adopting uniform percentage came up before this Court in the case of **Interfit Techno Products Ltd. Vs. The Principal Secretary and Commissioner of CT [reported in (2015) 81 VST 389]** wherein this Court issued certain directions as to how the Assessing Officer should proceed to determine the invisible loss / visible loss and the operative portion of the directions issued is as follows :*

".....

(3) For the reasons assigned, it is not sufficient for a dealer claiming refund under Section 18(2) of the Act to show that he has paid input tax on the

goods purchased; that those goods are used in the manufacture and nothing more but there is duty upon the dealer to satisfy the assessing authority that the claim is not hit by any of the restrictions or conditions contained under Section 19 of the VAT Act. In this regard, it is essential for the assessing authority to embark upon the fact finding exercise to ascertain the quantum of loss of the goods which were purchased on which tax was paid vis-a-vis the goods manufactured from and out of the goods purchased and to examine as to whether they fall within any of the restrictions contained in Section 19 of the VAT Act. The assessing officer has to conduct an exercise by which it is to be ascertained as to whether the representation made by the dealer is justified and is not hit by any of the restrictions and conditions contained in Section 19 and in particular Section 19(9) of the VAT Act.

(4) It is held that the assessing authorities are not justified in adopting uniform percentage as invisible loss and calling upon the dealer to reverse the input tax credit availed of to that extent. Consequently, all notices issued to the petitioner for reopening and all consequential order passed reversing the input tax credit to the extent of either four per cent or five per cent or on ad hoc percentage stands set aside. However, liberty is granted to the concerned assessing officer to issue appropriate show cause notices to the petitioners clearly setting out under what circumstances they propose to revise or call upon the petitioner to

reverse refund sanctioned and after inviting objections proceed in accordance with law."

8. Thus to ascertain as to whether there are quantum of loss of goods, which were purchased, on which, tax was paid, the Assessing Officer has to conduct an exercise, by which, he has to ascertain as to what would be the loss and uniform or ad hoc percentage cannot be adopted. To do so, it would be necessary for the Assessing Officer to conduct an inspection of the place of business of the petitioner to acquaint himself with the manufacturing process. However, since the respondent had adopted a uniform percentage, the same calls for interference."

5. Likewise, the restriction of the amount of Input Tax Credit for ineligible claim of Input Tax Credit on goods is also dealt with in the aforesaid decision in *M/s.Shri Raganathar Valves' case (supra)* in the following manner:-

"9. With regard to the second issue wherein the respondent rejected the claim for input tax credit on certain purchases effected on the ground that the commodities were not exported is concerned, the petitioner's case is that those products are used in the

manufacture of other goods, which are exported, as specified under Sub-Section (1) of Section 8 of the State Act and they are entitled to avail the input tax credit. However, the petitioner had no opportunity to put forth their objections on the above head”.

6. In view of the decisions in *Shri Ranganathar Valves (supra)*, it would be appropriate to call for objections of the petitioners in this regard.

7. In the light of the above findings, the impugned orders are set aside and the issue with regard to restriction of the amount of Input Tax Credit for prior sufferance of taxes is remanded back to the Assessing Officer for fresh consideration. The Assessing Officer shall, before taking a final decision, extend due opportunity of personal hearing to the petitioner and endeavour to complete the proceedings, atleast within a period of twelve weeks from the date of receipt of a copy of this order.

8. In view of the judgment of this Court in *Shri Ranganathar Valves (supra)*, it is open to the Assessing Officer to issue a show cause notice to the petitioner calling for his objections with regard to “Input Tax Credit on reversal on wastage” and “Ineligible claim of

ITC on goods" are concerned.

9. The Writ Petition is disposed of accordingly. No costs.

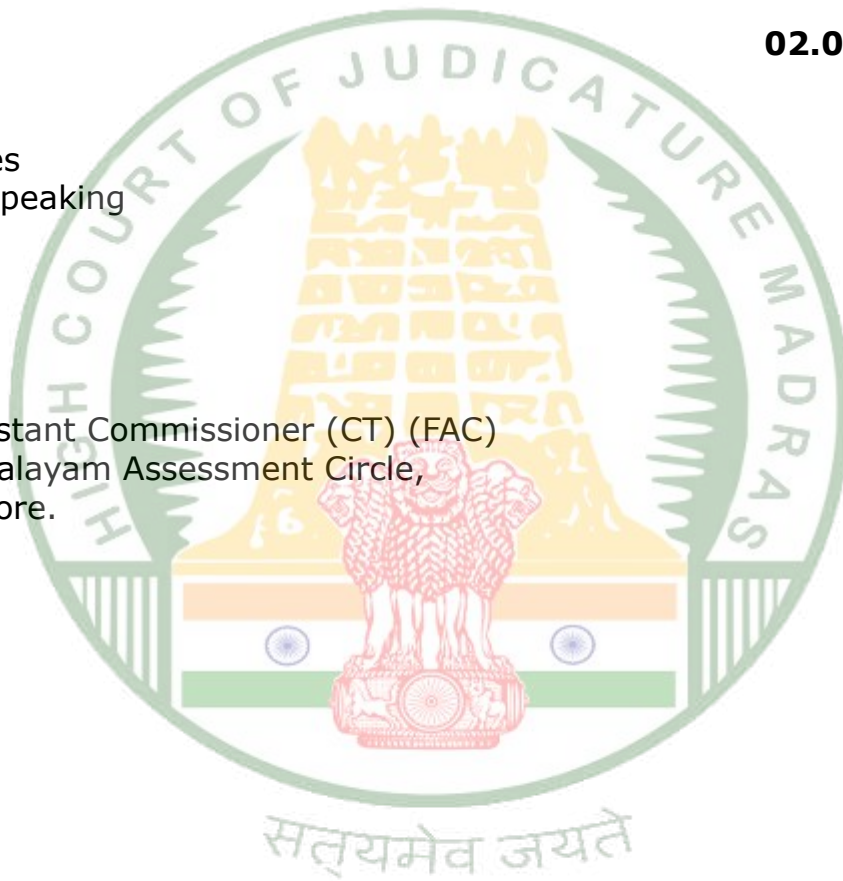
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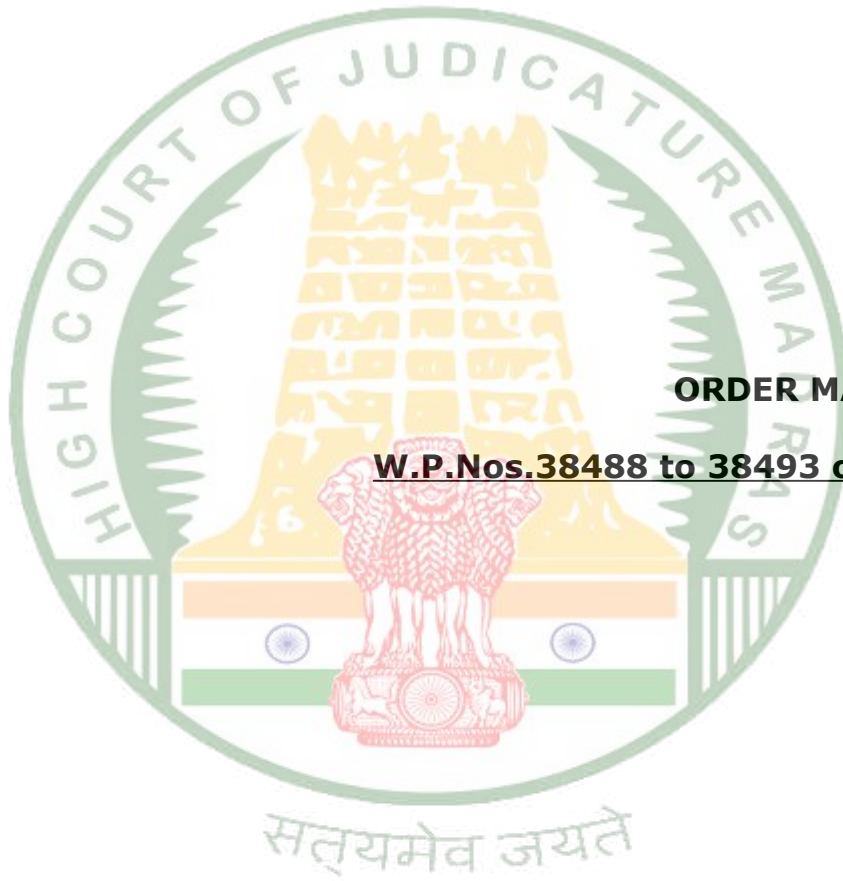
The Assistant Commissioner (CT) (FAC)
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M.S.RAMESH.J,

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ORDER MADE IN

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