2018 (15) G.S.T.L. 649 (Mad.) [24-04-2018]

2018 (15) G.S.T.L. 649 (Mad.)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[MADURAI BENCH]

M. Govindaraj, J.

THIAGARAJAR MILLS (P) LTD.

Versus

ADDITIONAL COMMISSIONER (CT), CHENNAI

W.P. (MD) No. 14828 of 2010 and M.P. (MD) No. 1 of 2010, decided on 24-4-2018

Input Tax Credit - Denial of - Tamil Nadu Value Added Tax Act, 2006 - Purchase of wind mill for generating electrical energy for use of manufacturing cotton yarn - Rejection of claim on the ground that wind mill not forming integral part of industrial premises, where manufacturing process undertaken - *HELD :* Since capital goods purchased and used for manufacturing of cotton yarn, which is taxable goods, petitioner entitled to avail Input Tax Credit as per Section 19(3) of Tamil Nadu Value Added Tax Act, 2006 - Wind mills cannot be erected or established within premises, but at place notified by authorities which may be different from industrial premises - Ample evidence produced proving that petitioner entered into agreement with Power Grid Corporation for transmitting power and relevant column showing same not distributed to anybody else on commercial basis - When erection of wind mill for purpose of generating power in manufacturing process construed as capital goods, Input Tax Credit ought to be made available to assessee as per Section 19(3) of Tamil Nadu Value Added Tax Act, 2006 - Section 19(3) of Tamil Nadu Value Added Tax Act, 2006. - *Impugned order set aside. Section 19(3) of the TNVAT Act specifies that every registered dealer, in respect of purchases of capital goods (for use in the manufacture of taxable goods), shall be allowed Input Tax Credit in the manner prescribed. As per Rule 10(4)(b) of the TNVAT Rules, the assessee is entitled to avail 50% of Input Tax Credit in the same financial year and the balance of Input Tax Credit, by the end of third financial year. After the expiry of third financial year, the unavailed Input Tax Credit, if any, shall lapse to the Government. [paras 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14]*

Input Tax Credit - Tamil Nadu Value Added Tax Act, 2006 - Capital Goods - Wind mill purchased for generating electrical energy for use of manufacturing cotton yarn - *HELD :* Relevant factor is, whether power generated utilised for manufacturing process by concerned dealer and solely for purpose of production of yarn in textile mill, then it should be considered as capital goods. *[para 6]*

Petition allowed

CASE CITED

Maruti Suzuki Ltd. v. Commissioner — 2009 (240) E.L.T. 641 (S.C.) — *Relied on*..... [Para 12]

REPRESENTED BY : Shri R.D. Ganesan, for the Petitioner.
Shri A. Muthukaruppan, Additional Government Pleader, for the Respondent.

[Order]. - The petitioner is a textile mill and an assessee under the respondents, vide TIN 33616230745. During the assessment years 2006-07, the petitioner purchased a wind mill for generating electrical energy for use of manufacturing cotton yarn being taxable goods. Accordingly, he claimed 50% of Input Tax Credit in the year 2007-08 and adjusted the same as per Section 19(3) of the Tamil Nadu Value Added Tax Act, 2006 [in short 'TNVAT Act'] read with Rule 10(4) of the Tamil Nadu Value Added Tax Rules, 2007 [in short 'TNVAT Rules'], but, such proposal was summarily rejected and notice dated 20-3-2009 was issued by the third respondent to pay the amount which the petitioner adjusted against his claim of Input Tax Credit on the purchase of wind mill. Against the order of the original authority, a revision was filed in R.P. No. 11 of 2009 and the revisional authority

remanded the matter by his order dated 16-11-2009, directing the original authority to provide an opportunity for making his objections. Thereafter, another order dated 17-3-2010 came to be passed confirming the rejection of Input Tax Credit claimed by the petitioner. Again, the petitioner preferred another revision and the second revision was rejected successively by the hierarchy of authorities. Aggrieved over the rejection, the petitioner is before this Court.

2. The respondents filed a counter affidavit that the writ petition is not maintainable in view of the availability of alternative remedy of appeal/revision under Section 59 of the TNVAT Act.

3. Heard both sides.

4. It is the admitted case that the petitioner is running a textile mill. It is also admitted that the entire energy generated through the wind mill established by the petitioner had been used for the manufacturing process by him. The petitioner had produced the audited statements of accounts and balance sheets to show that they have actually consumed the energy generated by them and they have not distributed the same on commercial basis. It is not the case of the respondents that the power generated was not consumed by the petitioner. The only procedure is that the power generated should be transmitted to the Grid under the TANGEDCO and from them, the petitioner has to get supply and utilise it.

5. It is also pertinent to note that the wind mills cannot be erected or established within the premises, but at a place notified by the authorities which may be different from the industrial premises.

6. The relevant factor is, whether the power generated is utilised for the manufacturing process by the concerned dealer and if it is solely for the purpose of production of yarn in a textile mill, then it should be considered as capital goods.

7. Section 19(3) of the TNVAT Act specifies that every registered dealer, in respect of purchases of capital goods (for use in the manufacture of taxable goods), shall be allowed Input Tax Credit in the manner prescribed. In the instant case, the yarn manufactured by the petitioner is a taxable good and Rule 10(4) of the TNVAT Rules, lays down the procedure for availing Input Tax Credit. The claim shall be made within thirty days from the date of commercial production under intimation to the assessing authority.

8. As per Rule 10(4)(b) of the TNVAT Rules, the assessee is entitled to avail 50% of Input Tax Credit in the same financial year and the balance of Input Tax Credit, by the end of third financial year. After the expiry of third financial year, the unavailed Input Tax Credit, if any, shall lapse to the Government.

9. The petitioner has claimed Input Tax Credit to the tune of Rs. 6,26,000/- (Rupees Six Lakhs and Twenty Six Thousand only) in the year 2007-08 for the capital goods purchased and used by him during the year 2006-07. Since the capital goods, namely, wind mill was purchased and used for the manufacturing of cotton yarn, which is taxable goods, he is entitled to avail Input Tax Credit as per Section 19(3) of the TNVAT Act.

10. The rejection of the claim on the ground that the wind mill does not form an integral part of the industrial premises, in which, the manufacturing is made and that the wind mill is situated at a far-off place, cannot be treated as capital goods in the manufacturing of cotton yarn, is not sustainable.

11. The relevant point is whether the power generated by the petitioner by erecting the wind mill was completely utilised for the manufacturing process, without there being any commercial exploitation, can be considered as capital goods or not?

12. The Honourable Supreme Court in *M/s. Maruti Suzuki Ltd.* v. *Commissioner of Central Excise, Delhi-III* [Civil Appeal No. 5554 of 2009, decided on 17-8-2009] [2009 (240) E.L.T. 641 (S.C.)] had a similar issue and it was held as follows :

> "19. The question which still remains to be answered is: whether an assessee would be entitled to claim CENVAT credit in cases where it sells electricity outside the factory to the joint ventures, vendors or gives it to the grid for distribution? In the case of *Collector of Central Excise* v. *Rajasthan State Chemical Works* reported in 1991 (55) E.L.T. 444 (S.C.) the test laid down by this Court is whether the process and the use are integrally connected. As stated above, electricity generation is more of a process having its own economics. Applying the said test, we hold that when the electricity generation is a captive arrangement and the requirement is for carrying out the manufacturing activity, the electricity generation also forms part of the manufacturing activity and the "input" used in that electricity generation is an "input used in the manufacture" of final product. However, to the extent the excess electricity is cleared to the grid for distribution or to the joint ventures, vendors, and that too for a price (sale) the "process and the use test" fails. In such a case, the nexus between the process and the use gets disconnected. In such a case, it cannot be said that electricity generated is "used in or in relation to the manufacture of final product, within the factory". Therefore, to the extent of the clearance of excess electricity outside the factory to the joint ventures, vendors, grid etc. would not be admissible for CENVAT credit as such wheeled out electricity, cleared for a price, would not fall within the definition of "input" in Rule 2(g) of the CENVAT Credit Rules, 2002. This view is also expressed in para 9 of the judgment of this Court in the case of *Collector of Central Excise* v. *Solaris Chemtech Limited* - 2007 (214) E.L.T. 481 (S.C.). Further, our view is supported by the observations of this Court in the case of *Vikram Cement* v. *Commnr., of Central Excise, Indore* - 2006 (194) E.L.T. 3 (S.C.) which is quoted below :-
>
> > "It appears to us on a plain reading of the clause that the phrase "within the factory of production" means only such generation of electricity or steam which is used within the factory would qualify as an immediate product. The utilization of inputs in the generation of steam or electricity not being qualified by the phrase "within the factory of production" could be outside the factory. Therefore, whatever goes into generation of electricity or steam which is used within the factory would be an input for the purposes of obtaining credit on the duty payable thereon.""

13. By ample evidence, the petitioner had proved that he has entered into an agreement with the Power Grid Corporation for transmitting the power and getting supply and then, the relevant column proved that it is not distributed to anybody else on commercial basis. In that when the erection of wind mill for the purpose of

generating power in the manufacturing process shall be construed as capital goods, Input Tax Credit shall be made available to the assessee as per Section 19(3) of the TNVAT Act.

14. In view of the above discussions, the order passed by the first respondent in Revision Petition :J1/60/2010 for the assessment year 2007-08, dated 25-11-2010, is set aside and the petitioner is entitled to refund of the amount if paid pursuant to the rejection of his claim by the authorities.

15. In fine, this writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.
