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W.P.Nos.31, 33 and 35 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	03.10.2024
Pronounced On	24 .10.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.31, 33 and 35 of 2022

and

W.M.P.Nos.36, 38 and 40 of 2022

M/s.ARS Steels and Alloy International

Private Limited,

Represented by its Deputy Director N.Prabu

... Petitioner in all W.Ps

Vs.

1.The State Tax Officer,

Group-I,

Inspection, Intelligence-I,

No.1, 1st Floor, Greams Road,

Chennai – 600 006.

2.The Deputy Commissioner (CT),

GST-Appeal, Chennai-I,

PAPJM Annexe Building,

3rd Floor, Greams Road,

Chennai – 600 006.

... Respondents in all W.Ps

Prayer in W.P.No.31 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the Order in AP/GST/368/2020 dated 31.08.2021 relating to year 2017-2018 passed by the second respondent confirming the Order made in GSTIN:33AALCA9425HIZL/2017-2018 dated 29.11.2019 passed by the first



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respondent and quash the same as without authority of law, contrary to law and to settled law.

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Prayer in W.P.No.33 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the Order in AP/GST/367/2020 dated 31.08.2021 relating to year 2018-2019 passed by the second respondent confirming the Order made in GSTIN:33AALCA9425HIZL/2018-2019 dated 29.11.2019 passed by the first respondent and quash the same as without authority of law, contrary to law and to settled law.

Prayer in W.P.No.35 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the Order in AP/GST/369/2020 dated 31.08.2021 relating to year 2019-2020 passed by the second respondent confirming the Order made in GSTIN:33AALCA9425HIZL/2019-2020 dated 29.11.2019 passed by the first respondent and quash the same as without authority of law, contrary to law and to settled law.

For Petitioner : Mr.M.A.Mudimannan
(In all W.Ps)

For Respondents : Ms.Amirtha Poonkodi Dinakaran
(In all W.Ps) Government Advocate

COMMON ORDER



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The petitioner is before this Court against the Impugned Orders dated 31.08.2021 passed by the Appellate Commissioner under Section 107 of the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017.

2. By the Impugned Orders dated 31.08.2021, demand that was earlier confirmed vide Assessment Orders dated 29.11.2019 has been affirmed insofar as denial of Input Tax Credit availed on goods viz., “Gold Coins” and “T-shirts” purchased by the petitioner for sales promotion of the goods manufactured by the petitioner for the respective Assessment Years.

3. In W.P.No.35 of 2022 for Assessment Year 2019-2020 apart from the above issue additional issue relating to stock variation pursuant to inspection and audit conducted at the premises of the petitioner on 28.08.2019 has also been confirmed by the Impugned Orders.

4. Initially, the petitioner had challenged the Assessment Orders dated 29.11.2019 passed for the respective Assessment Years in W.P.Nos.2885, 2888 and 2890 of 2020.

5. By a Common Order dated 24.06.2021, this Court had partly allowed



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these Writ Petitions insofar as manufacturing loss and directed the petitioner to

workout the remedy insofar as denial of “Input Tax Credit” on the sales promotional activity and on the stock difference noticed at the time of inspection on 28.08.2019 for the Assessment Year 2019-2020.

6. These two issues have now been confirmed by the Appellate Commissioner vide Impugned Orders dated 31.08.2021. The details of the demand affirmed vide Impugned Orders for the respective Assessment Years insofar as sales promotional activity that is tax suffered by the petitioner on the purchase of Gold Coin and T-shirts and the stock difference for the respective Assessment Year are detailed below:-

W.P.No.	W.P.No.31 of 2022	W.P.No.33 of 2020	W.P.No.35 of 2020	
Assessment Year	2017-2018	2018-2019	2019-2020	
	Reversal of ITC	Reversal of ITC	Reversal of ITC	Stock Difference
Tax	2,73,777/-	4,39,322/-	18,261/-	22,91,282/-
Penalty	40,000/-	86,386/-	60,000/-	2,29,128/-

7. These Writ Petitions have been filed as the appellate remedy under Section 112 of the respective GST Enactments are still illusionary as the GST Tribunal although notified is yet to be constituted. Hence this Writ Petition has been filed challenging the Impugned Order.



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WEB COPY 8. The learned counsel for the petitioner would submit that the sales promotional activity are in relation to the business activity and therefore in terms of Section 16(1) of the respective GST Enactments, the petitioner was entitled to take “Input Tax Credit” charged on the supply of both goods or services or both which were used or intended to be used in the course or furtherance of the business.

9. It is submitted that the sales promotional activity has been recognized by the Authorities both under the Tamil Nadu Value Added Tax (TNVAT) Act, 2006 regime and under the Central Excise (CE) Act, 1944 and the jurisprudence on this aspect is well settled by a plethora of the decisions of the Hon'ble Supreme Court of India.

10. It is therefore submitted that the denial of Input Tax Credit on the tax paid on Gold Coins and T-shirts which were offered to intermediate dealers/retail dealers to promote the sales of products of the petitioner ought to have been allowed and ought not to have been disallowed.

11. That apart, the learned counsel for the petitioner submits that the



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alleged stock shortage on account of inspection on 28.08.2019 is incorrect as the

inspection was carried out not in accordance with well known principles of governing stock audits. Hence, it is submitted that the denial of Input Tax Credit of Rs.7,31,369/- for the respective Assessment Years and Rs.22,91,282/- on stock difference for the Assessment Year 2019-2020 is unjustifiable and therefore liable to be interfered with.

12. Opposing the prayer, the learned Government Advocate appearing for the respondents on the other hand submits that although the decisions of the Advance Ruling Authorities under Section 98 of the respective GST Enactments, 2017 are not binding on the petitioner, the reasoning of the Maharashtra Authority for Advance Ruling Authority in M/s.Biostadt India Limited in its Order dated 20.12.2018 has clearly explained the legal position.

13. The learned Government Advocate for the respondents further submits that although Section 16(1) of the CGST Act, 2017 allows an Assessee to avail Input Tax Credit, it is subject to Limitation under Section 17(5) of CGST Act, 2017.

14. Specifically, learned counsel for the respondents would draw attention

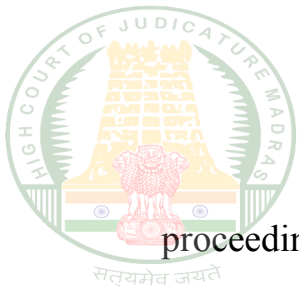


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to Section 17(5)(h) of CGST Act, 2017 wherein there is a specific embargo on an Assessee from availing Input Tax Credit on not only goods lost but also stolen, destroyed, written off or disposed of by way of gift or free samples. It is therefore submitted that the question of petitioner having unfettered right to avail Input Tax Credit on solitary reading of Section 16(1) of the CGST Act, 2017 is incorrect.

15. That apart, the learned Government Advocate for the respondents submits that restriction under Section 17(5) of CGST Act, 2017 particularly in Section 17(5)(h) stares at the petitioner and therefore the Impugned Order which upheld the Order passed earlier on 29.11.2019 insofar as denial of Input Tax Credit on the sales promotional activity is liable to be upheld. Hence, submits that Writ Petitions are liable to be dismissed on this count. As far as stock deficit is concerned, it is submitted that the Order is well-reasoned and does not call for any interference. He therefore, submits that the Writ Petition is to be dismissed.

16. Learned Government Advocate for the respondents has filed a copy of the Order passed by the Maharashtra Authority for Advance Ruling vide



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proceedings dated 20.12.2018 in the case of M/s.Biostadt India Limited.

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17. On the other hand, the learned counsel for the petitioner had filed two contra views of the Karnataka Authority for Advance Ruling and Telangana State Authority for Advance Ruling in the case of M/s.Orient Cement Limited.

18. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondents.

19. Section 16(1) of the respective GST enactments provides credit to an assessee, who is entitled to take credit of input tax charged on any supply of goods or services or both which are used or intended to be used in the course of furtherance of his/her business and that the said amount shall be credited to the Electronic Credit Ledger of such person.

20. The credit that is available under Rule 16(1) of the respective GST enactments is subject to such conditions/restrictions as may be prescribed and in the manner specified in Section 49 of the respective GST enactments.

21. Section 17 of the respective GST enactments deals with

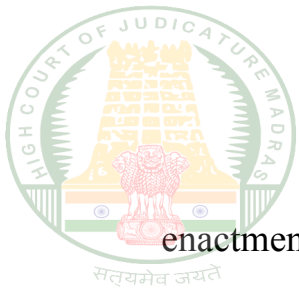


apportionment of credit and blocked credits. Section 17(5)(h) of the respective

WEB GST enactments read as under:-

TNGST Act	CGST Act
<p>17. Apportionment of credit and blocked credits:-</p> <p>(1)</p> <p>(2)</p> <p>(3)</p> <p>(4)</p> <p>(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—</p> <p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(d)</p> <p>(e)</p> <p>(f)</p> <p>(g)</p> <p>(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.</p>	<p>17. Apportionment of credit and blocked credits:-</p> <p>(1)</p> <p>(2)</p> <p>(3)</p> <p>(4)</p> <p>(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—</p> <p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(d)</p> <p>(e)</p> <p>(f)</p> <p>(g)</p> <p>(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.</p>

22. Section 17(5) is an exception to not only Section 16(1) of the respective GST enactments but also Section 18(1) of the respective GST



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enactments. In this case, this Court is not concerned with the situations contemplated under Section 18(1) of the respective GST enactments.

23. As far as the denial of the Input Tax Credit availed on the goods purchased by the petitioner for sales promotional activities are concerned, there is an embargo under Section 17(5)(h) of CGST Act, 2017 and TNGST Act, 2017.

24. The restrictions in Section 17(5)(h) of the respective GST enactments which has been pressed against the petitioner will apply to goods disposed of by way of gift or free samples. The law settled under Central Excise Act, 1944 or other Central Tax enactments are not applicable to the Context of the respective GST enactments.

25. As per Section 17(5) of the respective GST enactments, notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the supplies as stipulated in sub-clause (a) to (i) of Section 17 (5) of the respective GST enactments. Sub-clause (h) to Section 17(5) of the respective GST enactments makes it clear that no input tax credit shall be available in respect of



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the goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

26. The expression goods disposed by way of gift or free samples will specifically apply to the goods whether manufactured or traded by an assessee under the provisions of the respective GST enactments.

27. Therefore, it cannot be said that the petitioner is entitled to input tax credit for the items meant for sales promotional activities. The views of the Karnataka Authority for Advance Ruling and Telangana State Authority for Advance Ruling are rules *in personam* in terms of Section 98(4) of the respective GST enactments are correct.

28. Be that as it may, since the provisions of the respective GST enactments are clear in terms of Section 17(5)(h) of the Act, the petitioner was not entitled to avail the input tax credit on T-Shirts and Gold Coins purchased for Sales Promotional Activity.

29. As far as the Order in Appeal No.AP/GST/369/2020 dated 31.08.2021, affirming the Order dated 29.11.2019 passed by the first respondent



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for the Assessment Year 2019-2020 on the issue relating to stock variations are

concerned also the petitioner had not made out any case for interference.

30. Therefore, these Writ Petitions are dismissed. No costs. Connected Writ Miscellaneous Petitions are closed.

24.10.2024

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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To

1. The State Tax Officer,
Group-I,
Inspection, Intelligence-I,



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No.1, 1st Floor, Greams Road,
Chennai – 600 006.

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2.The Deputy Commissioner (CT),
GST-Appeal, Chennai-I,
PAPJM Annexe Building,
3rd Floor, Greams Road,
Chennai – 600 006.

C.SARAVANAN, J.

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Pre-Delivery Order in
W.P.Nos.31, 33 and 35 of 2022
and
W.M.P.Nos.36, 38 and 40 of 2022

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