

TAX INFO

Dated: 03.11.2020

Latest update on GST Law: Information regarding **Input Tax Credit cannot be disallowed on the ground that the seller has not paid tax to the Government** based on the **Judgement** issued by **Madras High Court**.

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Refund of Unutilized Input Tax Credit

Name of Petitioner	Sri Ranganathar Valves Private Limited
Name of Respondent	The Assistant Commissioner (CT) (FAC)
Name of Court	HC-Madras
Case Number	W.P.Nos. 38488 to 38493 of 2015
Date of Judgement	02/09/2020

Facts of the Case:

The Writ Petition relates to restriction of the amount of 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 ITC 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.

Observations:

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.

In the case of M/s. Shri Ranganathar Valves Private Limited Assistant Commissioner (CT), (FAC), Velandipalayam Assessment Circle, Coimbatore, 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. 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.

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.

Judgement:

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.

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