(2019) 08 JH CK 0028

In the Jharkhand High Court

Case No : Writ Petition (T) No. 2886 Of 2017 & Writ Petition (T) No. 2887 Of 2017 & Writ Petition (T) No. 5963 Of 2016

M/s Simplex Infrastructures Limited, Ranchi — APPELLANT

Vs

State Of Jharkhand And Ors — RESPONDENT

Date of Decision : 20-08-2019

Acts Referred:

Jharkhand Value Added Tax Act, 2005 — Section 18(4)(iii), 18(6), 18(8)
Jharkhand Value Added Tax Rules, 2006 — Rule 35(2)

Citation : (2019) 08 JH CK 0028

Hon'ble Judges : H.C. Mishra, J;Deepak Roshan, J

Bench : Division Bench

Advocate : Sumeet Gadodia, Jyoti Poddar, Amrita Sinha, Ritesh Kumar Gupta, Prabhat Kumar Sinha

Final Decision : Allowed

Judgement

Deepak Roshan, J

1. The instant application has been preferred by the petitioner-company for the following reliefs:-

(a) For declaration that the petitioner is entitled for a claim of Input Tax Credit (hereinafter referred to as 'ITC') solely on the basis of original tax invoices in view of Section 18(6) of Jharkhand Value Added Tax (hereinafter referred to as 'JVAT') Act read with Section 18(8) of the said Act.

(b) For quashing the order dated 25.10.2016 (annexure-5) passed by the Learned Commissioner of Commercial Taxes, Jharkhand, Ranchi in Revision Case No. CC(S) 189/2016.

(c) For quashing the assessment order dated 31.03.2015 (annexure-4) for the assessment year 2011-12 passed by DCCT, Special Circle, Ranchi to the extent ITC has been denied on account of non-availability of JVAT Form 404.

(d) For quashing demand notice dated 31.03.2015 (annexure-4/1) showing excess of only Rs. 4,86,93,053.54 to the extent it relates to denial of input tax credit on account of non-availability of JVAT Form 404 and

(e) For a direction upon the respondent to issue fresh demand notice showing excess payment after including the claim of ITC.

2. It has been submitted by the learned counsel for the petitioner that the petitioner-company has claimed ITC to the tune of Rs. 13,13,18,734.38/-. The assessing officer has allowed ITC only to the tune of Rs.8,72,39,277.52/- and denied the balance ITC claim to the tune of Rs.4,40,79,456.86/- on the ground that for this amount, JVAT 404 form was not submitted by the petitioner. It has been contended by the learned counsel for the petitioner that the petitioner-company was in possession of original tax invoices in respect of aforesaid balance purchase of goods also, for which it could not produce JVAT 404 form, and as per provision of Section 18(6) of the JVAT Act, 2005, claim of ITC of the petitioner was required to be considered by the assessing officer on the strength of tax invoices in original produced by the petitioner showing payment of tax. However, the said claim of the petitioner was denied by the Assessing Officer by relying upon Rule- 35(2) of the JVAT Rules, 2006 which apart from prescribing the condition of original tax invoices also lays down additional condition of producing declaration in Form JVAT 404. The contention of the petitioner is that Rule- 35(2) of the JVAT Rules, 2006 to the extent it provides for furnishing declaration Forms JVAT 404 for availing benefit of ITC cannot be treated to be mandatory in nature and the same can, at best, be treated as directory in nature, especially in view of fact that Section-18(6) of the JVAT Act, 2005 does not provide for furnishing of JVAT 404 forms for the purpose of claiming benefit of ITC and it only contemplates production of tax invoices in original and even in appropriate cases, the Assessing Officer can even dispense with requirement of production of tax invoices in original for good and sufficient reasons to be recorded in writing .

3. The learned counsel for the petitioner further submits that the issue involved in the instant case is squarely covered by the decision passed in the case of Brahmaputra Metallics Limited, Ranchi Vs. The State of Jharkhand and others in W.P.(T) No.2775 of 2017 allowed by this Court vide order dated 09.07.2019.

4. Per Contra, the learned counsel for the respondent-State has contended that though the issue raised regarding submission of Form 404 is decided by this Court in the aforesaid case, however, facts of that case is different from the instant case. In the instant case, the petitioner has not availed the alternative remedy by filing revision application before the learned Tribunal whereas in the above referred case, the petitioner after availing the entire remedy knocked the door of this Court, as such it is not correct to say that the decision passed in Brahmaputra Metallics Limited (supra) is squarely applicable in the instant case.

5. Heard learned counsel for the parties. It appears that the issue involved in the

instant writ application is similar to the issue raised in the case of Brahmaputra Metallics Limited (supra). Relevant paragraph of the said case is quoted hereinbelow:

"36. So far as the second issue regarding availability of benefit of ITC to the petitioner in absence of production of Statutory JVAT 404 Forms is concerned, it appears that from bare reading of Section- 18(6) of the JVAT Act, 2005 would reveal that ITC can be claimed by a dealer on production of tax invoices in original containing the prescribed particulars of sale evidencing the amount of tax paid. Further, said section contemplates that even for good and sufficient reasons to be recorded in writing where a dealer is prevented from furnishing tax invoices in original the prescribed authority may even then allow ITC by recording its reason. Thus, Section-18(6) of the JVAT Act, 2005 does not contemplate production of JVAT -404 Forms as a mandatory condition for availing benefit of ITC. However, Rule- 35(2) of the JVAT Rules, 2006 stipulates further condition of production of JVAT 404 Form as requirement for claiming benefit of ITC. To this extent, Rule- 35(2) of the JVAT Rules, 2006 is inconsistent with the provision of Section- 18(6) of the JVAT Act, 2005 and is required to be held directory in nature and not mandatory.

40. For the reasons stated hereinabove, our conclusion is as follows: -

(i) Coal used for generation of electricity in the captive power plant of the petitioner and electricity generated, in turn utilized exclusively for the manufacture of finished goods, is to be treated as raw material of the finished goods and, would qualify for the benefit of Input Tax Credit as per Section- 18(4)(iii) of the JVAT Act, 2005. Accordingly, we direct the respondent-State of Jharkhand to extend the benefit of Input Tax Credit to the petitioner on tax paid by it on purchase of coal utilized by it for generation of electricity; (ii) We further conclude and hold that the provisions of Rule-35(2) of the JVAT Rules, 2006 which prescribes the condition of furnishing of JVAT- 404 Forms for the purpose of claiming Input Tax Credit is merely directory in nature and not mandatory.

However, the Assessee who fails to produce JVAT-404 Forms in terms of Rule-35(2) of the JVAT Rules, 2006 is required to substantiate its claim of Input Tax Credit by producing documents as enumerated under Section 18(6) of the JVAT Act, 2005. It is open for the respondent-State of Jharkhand to verify the genuineness of the said documents and to ascertain as to whether said Assessee, in fact, has discharged the liability of input tax at the time of procurement of inputs. Accordingly, we direct the respondent-State of Jharkhand to re-examine the claim of the petitioner towards its claim of Input Tax Credit amounting to Rs.33,38,740/- in respect of which the petitioner has not submitted JVAT-404 Forms, by verifying the said claim from tax invoices in original containing particulars of sale evidencing the amount of input tax paid and on being satisfied that the petitioner has paid input tax as aforesaid, extend the benefit of Input Tax Credit to the petitioner."

6. After going through the judgment passed in Brahmaputra Metallics Limited (supra), we have no hesitation in holding that the issue raised in instant application is squarely covered by the judgment referred in Brahmaputra Metallics Limited (supra). Accordingly, we direct the respondent-State of Jharkhand to re-examine the claim of the petitioner towards its claim of Input Tax Credit amounting to Rs. 4,40,79,456.86/- in respect of which the petitioner has not submitted JVAT-404 Forms, by verifying the said claim from tax invoices in original containing particulars of sale evidencing the amount of input tax paid and on being satisfied that the petitioner has paid input tax as aforesaid, extend the benefit of Input Tax Credit to the petitioner.

7. Accordingly, for the reasons and judgment referred herein above, the assessment order dated 31.03.2015 (annexure-4), the demand notice dated 31.03.2015 (annexure-4/1) and also the order dated 25.10.2016 (annexure-5), are hereby, set-aside and the Assessing Authority is directed to give effect to the order passed by this Court within a period of eight weeks from the date of receipt of copy of the order.

8. This writ application is accordingly, allowed, with the directions as above.