

No Reversal of ITC for loss of inputs during manufacturing process

The Hon'ble Madras High Court in ***ARS Steel & Alloy International Pvt. Ltd. v. the State Tax Officer [W.P. Nos. 2885,2888,2890,3930,3936 and 3933 of 2020 and WMP. Nos. 3341,3345,3336,4664,4656 and 4661 of 2020 and W.P. No. 2885 of 2021, dated June 24, 2021]*** set aside the assessment orders passed by the Revenue Department rejecting a portion of the Input Tax Credit (“ITC”) on inherent manufacturing loss claimed by the assessee. Held that, reversal of ITC under Section 17(5)(h) of the Central Goods and Services Tax Act,2017 (“**the CGST Act**”) in case of loss of input which is inherent to manufacturing loss is misconceived, as such loss is not contemplated or covered by situations adumbrated under Section 17(5)(h) of the CGST Act.

Facts:

ARS Steel & Alloy International Pvt. Ltd. (“**the Petitioner**”) is engaged in the manufacture of MS Billets and Ingots. MS scrap is an input in the manufacture of MS Billets and the latter, in turn, constitutes an input for manufacture of TMT/CTD Bars. There is a loss of a small portion of the inputs, inherent to the manufacturing process.

This batch of writ petition has been filed against the assessment order (“**impugned order**”) passed by the State Tax Officer (“**the Respondent**”) that seeks to reverse a portion of the ITC claimed by the Petitioner, proportionate to the loss of the inputs, referring to the provisions of Section 17(5)(h) of the CGST Act for the periods 2017-18, 2018-19 and 2019-20.

Issue:

- Whether a reversal of ITC is contemplated in relation to loss arising from manufacturing process?

Held:

The Hon'ble Madras High Court in ***W.P. Nos. 2885,2888,2890,3930,3936 and 3933 of 2020 and WMP. Nos. 3341,3345,3336,4664,4656 and 4661 of 2020 and W.P. No. 2885 of 2021 dated June 24, 2021,*** held as under:

- Noted that, to interpret Section 17(5)(h) of the CGST Act, an equivalent provision was contained in the erstwhile GST regime, under Section 19 Tamil Nadu Value Added Tax

Act, 2006 (“the TNVAT Act”) which deals with various situations arising from the grant and reversal of ITC by the registered dealer.

- Observed that, the provisions of Section 19 of the TNVAT Act is reiterated in the provisions of the Section 17 of the CGST Act, and stated that, Section 17(5)(h) of the CGST Act indicates loss of inputs that are quantifiable, and involve external factors or compulsions. A loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself.
- Relied on the judgment of the Hon’ble Madras High Court in case of ***Rupa & Co. Ltd. V. CESTAT, Chennai (2015 (324) ELT 295)***, wherein, the Court noted that some amount of consumption of the inputs was inevitable in the manufacturing process, and held that CENVAT credit should be granted on the original amount of inputs used notwithstanding that the entire amount of inputs would not figure in the finished product.
- Set aside the impugned order passed by the Respondent.
- Held that, the reversal of ITC involving Section 17(5)(h) of the CGST Act by the Revenue Department, in cases of loss by consumption of input which is inherent to manufacturing loss is misconceived, as such loss is not contemplated or covered by the situations adumbrated under Section 17(5)(h) of the CGST Act.

Relevant Provisions:

Section 19(1) of the TNVAT Act:

“19. Input tax credit-

(1) There shall be input tax credit of the amount of tax paid Omitted[or Payable] under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule :

Provided that the registered dealer, who claims input tax credit, shall establish that the tax due On purchase of goods has actually been paid in the manner prescribed by the registered dealer who sold such goods and that the goods have actually been delivered Provided further that the tax deferred under section 32 shall be

deemed to have been paid under this Act for the purpose of this sub-section.

.....

(8) No input tax credit shall be allowed to any registered dealer in respect of any goods purchased by him for sale but given away by him by way of free sample or gift or goods consumed for personal use.

(9) No input tax credit shall be available to a registered dealer for tax paid Omitted[or Payable] at the time of purchase of goods, if such-

- (i) goods are not sold because of any theft, loss or destruction, for any reason, including natural calamity. If a dealer has already availed input tax credit against purchase of such goods, there shall be reversal of tax credit; or*
- (ii) inputs destroyed in fire accident or lost while in storage even before use in the manufacture of final products; or*
- (iii) inputs damaged in transit or destroyed at some intermediary stage of manufacture.”*

Section 17(5)(h) of the CGST Act:

“17. Apportionment of credit and blocked credits.

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

.....

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;”

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