IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(T) No. 4566 of 2021

Exide Industries Limited, having its branch office at Station Road, Jugsalai, Near Ghora Chowk, Jamshedpur-831006, P.O. & P.S.-Jugsalai, District-Singhbhum East Jharkhand, through its Senior Accounts Officer. ..… Petitioner

Versus

1. The State of Jharkhand, through its Secretary Cum Commissioner of Commercial Taxes, Head Quarter, Jharkhand, having its office at Project Building, HEC, P.O. & P.S.-Dhurwa, District-Ranchi.
2. The Deputy Commissioner of Commercial Taxes, Singhbhum Circle, Jamshedpur, having its office at Sakchi P.O. & P.S.-Sakchi, Jamshedpur, District-Singhbhum East.
3. The Joint Commissioner of Commercial Taxes, (Appeal), having its office at Sakchi P.O. & P.S.-Sakchi, Jamshedpur, District- Singhbhum East.

..... Respondents

CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner : Mr. M.S.Mittal, Sr. Advocate
Mr. Rahul Lamba, Advocate.
For the Respondents : Mr. P.A.S.Pati, G.A.-II

Reserved on: 10/03/2022 **Pronounced on: 23/03/2022**

Deepak Roshan, J: Heard learned counsel for the parties.

2. The instant writ application has been preferred for the following reliefs:-

> ***a.*** *For the issuance of an appropriate writ or a writ in the nature of certiorari for quashing the Judgment and Order dated 28.07.2021 passed by the Ld. Commercial Taxes Tribunal in JR 07 of 2016 (Period 2012-13VAT) (Annexure-6 to this petition) whereby the revision petition of the petitioner herein, challenging the Order dated 19.10.2016 of the Joint Commissioner of Commercial Taxes (Appeal), with respect to the partial disallowance of Input Tax Credit to the petitioner, was dismissed.*
> ***b.*** *For the issuance of an appropriate writ or a writ in the nature of certiorari for quashing the order dated 19.10.2016 of the Joint Commissioner of Commercial Taxes (Appeal) passed in Appeal Case No. SG-VAT-A-43/2015-16 (Annexure-3 to this petition) which partly dismissed the appeal preferred by the petitioner herein and inter alia confirmed the Assessment order dated 05.10.2015 passed by the respondent No.2 with respect to the part disallowance of the Input Tax Credit to the petitioner.*
> ***c.*** *For issuance of an appropriate writ or writ in the nature of certiorari for quashing the Assessment order dated 05.10.2015 passed by the Respondent No.2 wherein the Input Tax Credit, amounting to Rs. 15,98,658/- was*

disallowed to the petitioner (Annexure-2 to this petition) by applying Section 18(8)(ix) of the Jharkhand Value Added Tax Act, 2005.

d. *For the issuance of an Interim order that till the final disposal of the present writ petition, the operation and effect of the said order and judgment dated 28.07.2021 passed by the Ld. Commercial Taxes Tribunal (Annexure-6 to this petition) the said order dated 19.10.2016 passed by the Joint Commissioner of Commercial Taxes (Appeal) (Annexure-3 to this petition) and the said Assessment order dated 05.10.2015 passed by the respondent No.2 herein (Annexure-2 to this petition) shall remain stayed.*

3. The brief facts of the case is that the petitioner was assessed under the Jharkhand Value Added Tax Act, 2005 (hereinafter referred as "JVAT Act") for the financial year 2012-13 vide Assessment Order dated 05.10.2015 passed by the respondent no.2. By the said assessment order *inter alia* the petitioner was disallowed the Input Tax Credit amounting to Rs. 1,28,617/- for the reason that the petitioner could not produce Form JVAT-404 in support of the said amount of Rs.1,28,617/- as Input Tax Credit. Further, in the said Assessment Order, the Input Tax Credit amounting to Rs. 15,98,657.48/- was disallowed to the petitioner on the basis of Section 18(8) (ix) of the JVAT Act.

It further transpires that the Joint Commissioner of Commercial Taxes (Appeal), vide its order dated 19.10.2016, partly allowed the said appeal of the petitioner on the issues which are not involved in the instant writ petition and partly disallowed the said appeal of the petitioner by disallowing the Input Tax Credit, amounting to Rs.15,98,658/- to the petitioner by confirming the Assessment order dated 05.10.2015 in respect to the same by applying Section 18(8)(ix) of the JVAT Act.

It further transpires that the petitioner had filed its supplementary affidavit dated 03.12.2019 before the Ld. Commercial Taxes Tribunal in the revision case. The said supplementary affidavit of the petitioner was taken on record by the Ld. Tribunal vide its order dated 04.12.2019; however, the Ld. Tribunal vides its judgment and order dated 28.07.2021 dismissed the revision application of the petitioner (Revision Case No. JR-07 of 2016) by confirming that Section 18(8)(ix) of the JVAT Act is applicable to the petitioner and therefore the relevant Input Tax Credit amount has been disallowed on the basis of Section 18(8)(ix) of the JVAT Act.

4. Mr. M. S. Mittal, learned Sr. counsel assisted by Mr. Rahul Lamba submits that all the aforesaid orders; whether passed by the Assessing Officer or by the Appellate Authority and/or by the Revisional Authority respectively; are based on an incorrect interpretation and erroneous application of Section 18 (8) (ix) of the JVAT Act. He further submits that the petitioner was claiming Input Tax Credit of Rs. 30,62,285/- on the Intra-State purchases of the scrap batteries made by the petitioner during the relevant period. Accordingly, in order to apply Section 18 (8) (ix) of the JVAT Act, 2005, in the case of the petitioner and to disallow the said Input Tax Credit on purchase of scrap batteries, the Respondent Department had the onus to show that the said scrap batteries were consumed by the petitioner for manufacture of goods in the State of Jharkhand and such manufactured goods were meant for Inter State transfer of stock or for sale outside the State. However, it is clear from the impugned orders that the Respondent Department has not shown or established the above. As such, the Input Tax Credit has been wrongly disallowed to the petitioner for the relevant period.

Learned sr. counsel further submits that it can be seen from the Assessment Order that the only factual allegation made to apply Section 18 (8) (ix) of the JVAT Act, in the case of the petitioner is that the petitioner has made an Inter State Stock transfer of Rs.228,57,82,887/-. He contended that the Assessment Order does not even speaks which goods have been inter-state stock transferred by the petitioner and particularly the Assessment Order does not indicate that the same amount of Inter State Stock transfer made by the petitioner includes scrap batteries purchased by the petitioner within the State of Jharkhand.

Learned sr. counsel contended that the Assessment Order has not even alleged that the petitioner is engaged in the activity of manufacturing within the State of Jharkhand. Similarly the Appellate Order dated 19.10.2016 has also erroneously applied Section 18 (8) (ix) of the JVAT Act to the case of the petitioner and disallowed the relevant Input Tax Credit. There is not even a whisper in the said order that the

petitioner is indulged in manufacturing activities so as to attract the provisions of Section 18 (8) (ix) of the JVAT Act. Even the Ld. Commercial Taxes Tribunal in its revision order dated 28.07.2021 has erred in making a finding that the petitioner did not produce any documents to show that the petitioner was not a manufacturer in the State of Jharkhand. Admittedly; the petitioner is not engaged in manufacturing activities within the State of Jharkhand and is only engaged in trading activities which is also evidently clear from the Registration Certificate of the petitioner under the JVAT Act, 2005 which is an unimpeachable document. Thus, the Ld. Tribunal erred in not considering that the facts which are undisputed are not required to be proved.

He contends that the Ld. Tribunal has misinterpreted Section 18 (8) (ix) of the JVAT Act and has wrongly held that provision of law does not mandate that the goods should be used by the Dealer as raw materials for manufacturing purpose. It further erred in holding that scrap batteries could be used only for the purpose of manufacturing or processing of goods. It failed in considering the fact that the scrap batteries can also be traded or re-sold to any third party. Further, as per Section 18 (8) (ix) of the JVAT Act, 2005 the petitioner was entitled to the entire Input Tax Credit on the sale of scrap batteries made in the course of Inter State Trade and Commerce falling under Sub-Section (1) of Section 8 of the Central Sales Tax Act, 1956.

He lastly submits that the Ld. Tribunal has also erred in not considering the relevant facts brought before it by way of the supplementary affidavit filed by the petitioner (Annexure-4); as such the impugned orders are fit to be quashed and set aside.

5. Mr. P.A.S.Pati, learned counsel for the revenue relying on the counter affidavit contends that the Ld. Tribunal has recorded its finding with regard to the supplementary affidavits filed by the petitioner and reason for not considering the same. He further submits that the petitioner did not produce any document before the assessing officer as well as the appellate authority to show that the goods (scrap batteries) were sold in the same form as it was purchased and only in course of hearing of the revision petition the petitioner filed supplementary

affidavits to make out a case in his favour.

He further reiterated the stand taken in the counter affidavit and submits that the learned Tribunal has rightly held that the petitioner has failed to produce any document before the assessing officer as well as the appellate authority to show that there was compliance of Rule 26 (12) of the Jharkhand Value Added Tax Rule 2006 to establish that the petitioner was selling the goods in the same form as he had purchased. It would also be relevant to State herein that the plea of interstate sale of scrap batteries was taken after a long delay for first time before the Ld. Tribunal. Further the petitioner has not produced the documents evidencing inter-state sale of scrap batteries. This fact assumes more importance in view of the fact that the petitioner deals in both new and scrap batteries. The petitioner has failed to lead any evidence before the Assessing Officer that the scrap batteries on which it was claiming ITC were not inter-state stock transferred but were sold during the course of inter-state trade and commerce during the period 2012-13.

Mr. Pati lastly submitted that at best the matter can be remanded back to the Ld. Tribunal to verify the averments made in the supplementary affidavit and the documents annexed therein, inasmuch as, the petitioner heavily relies upon the supplementary affidavit and contends that the same should have been considered by learned tribunal while deciding the issue.

6. Having heard learned counsel for the parties and after going through the documents annexed with the respective affidavits and the averments made therein it appears that the Petitioner is a battery manufacturing and trading company. It has its manufacturing unit in the States of West Bengal, Tamil Nadu, Haryana and Maharashtra; however, no manufacturing activity is carried out in the State of Jharkhand and the Petitioner only engages in trading activity. Reference in this regards may be made to the registration certificate of the Petitioner which at Serial No.9 indicates the “Nature of Business” as “Wholesale Trade” (**Annexure – 1**).

7. From record it appears that the Petitioner, for its business in the State of Jharkhand, gets the new batteries, by way of stock transfer into

the State of Jharkhand from its manufacturing units located outside the State of Jharkhand. These new batteries, which are obtained by the Petitioner by way of the said stock transfer, are locally sold within the State of Jharkhand and / or the new batteries are sent by way of stock transfer to the other units of the Petitioner located outside the State of Jharkhand. Further, the Petitioner, for its business in the State of Jharkhand, locally purchases scrap batteries and sale the same to other persons located outside the State of Jharkhand. It is a specific case of the Petitioner that it is not involved in any activity of manufacturing of the batteries or otherwise within the State of Jharkhand.

8. The present dispute pertains to the period 2012 -2013. The Petitioner during the said period, had made local purchases of scrap batteries worth Rs. 6,12,45,703/- on which it had claimed Input Tax Credit ("**ITC**") of Rs. 30,62,285. However, in the assessment order (**Annexure–2**); the assessing officer, after applying Section 18(8)(ix) of the JVAT Act, 2005, has allowed only a portion of ITC claimed and availed since the Petitioner has made interstate stock transfers. The Assessment order categorically observed that the Petitioner is a trader within the State of Jharkhand. The said assessment order was confirmed by the appellate authority (**Annexure–3**) and thereafter the Ld. Tribunal (**Annexure – 6**), again by relying on Section 18(8)(ix) of the Act, confirmed the Assessment order.

It further transpires that there was not even a whisper of allegation in the assessment order or the appellate order that the petitioner was involved in manufacturing activities within the State of Jharkhand.

9. Thus, the only dispute in the present case relates to the interpretation and applicability of Section 18(8) (ix) of the JVAT Act in the case of this Petitioner. For brevity, relevant portion of the Act, as it existed during the assessment year 2012-13, is reproduced herein below:

> "***S. 18 Input Tax Credit***
> *(8) No input tax credit under sub-Section (1) shall be claimed or be allowed to a registered dealer:*

> *(ix) in respect of goods* ***consumed <u>for manufacture</u>*** *of goods for Inter-State transfer of stock or for sale outside the State.*"

10. From bare perusal of the aforesaid provision, it manifest that Section 18(8)(ix) of the JVAT Act is only applicable in case when some manufacturing activity is undertaken by the dealer. In the present case, admittedly, no manufacturing activity is carried out by the Petitioner in the State of Jharkhand. It is only a trader and hence Section 18(8)(ix) cannot be applied in the case of the Petitioner.

The categorical averments made in paragraph 22, 29 & 30 of the writ application to the extent that petitioner is not a manufacturer has not been denied by the respondent authority. Further, the fact that the Petitioner is not a manufacturer is also admitted in the assessment order, appellate order and the revisional order. The unimpeachable evidence in this regard is the registration certificate of the Petitioner.

11. For the Respondent authorities, to apply Section 18(8)(ix) of the JVAT Act in the case of the petitioner; the burden was on them to establish that the Petitioner was engaged in manufacturing activity in the State of Jharkhand. However, such burden was not discharged by them. Moreover, it has not been alleged that the Petitioner is a manufacturer in the State of Jharkhand. Reference in this regard may be made on the decision of the Hon'ble Apex Court in ***CIT v. Sati Oil Udyog Ltd., (2015) 7 SCC 304,*** wherein the Hon'ble Court, placing reliance on the judgment rendered in ***K.P. Varghese v. ITO***, **(1981) 4 SCC 173,** held as under:

> ***23.*** *The Court further went on to hold: (K.P. Varghese case [(1981) 4 SCC 173 : 1981 SCC (Tax) 293 : (1982) 1 SCR 629] , SCC pp. 189-90, para 13 : SCR pp. 652-54)*
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> > *"13. .... <u>It is a well-settled rule of law that the onus of establishing that the conditions of taxability are fulfilled is always on the Revenue and the second condition being as much a condition of taxability as the first, the burden lies on the Revenue to show that there is understatement of the consideration and the second condition is fulfilled. Moreover, to throw the burden of showing that there is no understatement of the consideration, on the assessee would be to cast an almost impossible burden upon him to establish the negative, namely, that he did not receive any consideration beyond that declared by him</u>."*

> ***25.*** *Taking a cue from Varghese case [(1981) 4 SCC 173 : 1981 SCC (Tax) 293 : (1982) 1 SCR 629] , we therefore, hold that Section 143(1-A) can only be invoked where it is found on facts that the lesser amount stated in the return filed by the assessee is a result of an attempt to evade tax lawfully payable by the assessee. The burden of proving that the assessee has so attempted to evade tax is on the Revenue which may be discharged by the Revenue by establishing facts and circumstances from which a reasonable inference can be drawn that the assessee has, in fact, attempted to evade tax lawfully payable by it. Subject to the aforesaid construction of Section 143(1-A), we uphold the retrospective clarificatory amendment of the said section and allow the appeals. The judgments of the Division Bench [CIT v. Ashok Paper Mills Ltd., 2002 SCC On Line Gau171 : (2002) 256 ITR 673] of the Gauhati High Court are set aside. There will be no order as to costs.*

12. By going through the impugned order it further transpires that the Ld. Tribunal has gone a step further and attempted to draw inferences out of Section 18(8) (ix) of the JVAT Act. In paragraph 20 of its order, the Ld. Tribunal has *inter alia* held as under:

> *(i) The intent of Section 18(8)(ix) is that such goods which are even "likely to be used" as raw materials for manufacturing / processing, are not eligible to be taken into account for the purpose of ITC. Therefore, even if a person is not a "manufacturer", Section 18(8)(ix) would be applicable.*
>
> *(ii) Scrap batteries could only have been used for manufacturing or processing of goods and hence 18(8)(ix) would be applicable.*

As regards the first finding, the same is ex facie contrary to the express language used in Section 18(8)(ix) of the JVAT Act. The said section, in unequivocal terms, stipulates that goods purchased should be consumed for manufacture. The finding of the Ld. Tribunal that it seems to be the "intent" of the legislature that even goods that are "likely to be used" in manufacture (and hence the said section will apply even if a person is not a manufacturer), is contrary to the mandate of Section 18(8)(ix) of the Act.

13. It is well settled that in a taxing statute there is no room for intendment. In the quoted words of Rowlett, J. in ***Cape Brandy Syndicate v. Inland Revenue Commissioner,*** **(1921) 1 KB 64,** "*In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no*

presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used".

The above maxim was accepted by the Hon'ble Apex Court in the case of ***Polestar Electronic (P) Ltd. v. Addl. CST***, **(1978) 1 SCC 636,** wherein it has been held that:

> *"**12.** It must also be remembered that Section 5(2)(a)(ii) and the second proviso occur in a taxing statute and it is well-settled rule of interpretation that in construing a taxing statute "one must have regard to the strict letter of the law and not merely to spirit of the statute or the substance of the law". The oft quoted words of Rowlett, J., in Cape Brandy Syndicate v. Inland Revenue Commissioner [(1921) 1 KB 64] lay down the correct rule of interpretation in case of a fiscal statute : "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." It is a rule firmly established that "the words of a taxing Act must never be stretched against a tax-payer". If the legislature has failed to clarify its meaning by use of appropriate language, the benefit must go to the tax-payer. Even if there is any doubt as to interpretation, it must be resolved in favour of the subject. We would, therefore, be extremely loathe to add in Section 5(2)(a)(ii) and the second proviso words which are not there and which, if added, would have the effect of imposing tax liability on the purchasing dealer…."*

As per the aforesaid reasoning, the language of Section 18(8)(ix) of the JVAT Act cannot be stretched to deduce some non-existent intention that the said section would apply even if the dealer is not a manufacturer. Thus, the findings of Ld. Tribunal are patently erroneous.

14. Further, the finding that scrap batteries could only have been used for processing or manufacturing is also incorrect, inasmuch as, a dealer such as the Petitioner is also free to trade in the said scrap batteries, i.e., sale and re-sale. It is incorrect to presume that scrap batteries can only be used for processing or manufacturing. If the interpretation of the Ld. Tribunal is accepted, then several traders would be debarred from eligible ITC since all products are ultimately processed or manufactured. The word 'trader' would itself lose its meaning.

15. The arguments of the learned counsel for the Revenue that at best the matter can be remanded back to the Ld. Tribunal to verify the

averments made in the supplementary affidavit and the documents annexed therein; is not acceptable to us for following reasons:

(i) The stand of the respondent department, throughout in the assessment proceeding, appellate proceeding and revisional proceeding, has been that Section 18 (8) (ix) of the JVAT Act, 2005 is applicable in the case of the Petitioner and accordingly full input tax credit cannot be allowed to the Petitioner.

(ii) In order to apply Section 18 (8) (ix), the first mandatory condition is that there has to be a manufacturing activity undertaken by the Assessee within the State of Jharkhand. It is only when there is a manufacturing activity that the second condition that such manufactured goods are stock transferred comes into play. If there is no manufacturing activity by the Assessee then it is futile to ascertain whether the goods have been stock transferred or not.

(iii) In the instant case, there is in fact even no allegation by the Respondent Department in the assessment, appellate or revisional proceeding that the Petitioner is involved in manufacturing activities in the State of Jharkhand; therefore when the Petitioner is not carrying manufacturing activity within the State of Jharkhand, then the very first essential condition of Section 18 (8) (ix) is not attracted; thus, any remand for having an enquiry on the second condition will be a futile exercise.

(iv) Further, it is an admitted position that the Respondent department has never challenged the assessment order by way of *suo-motu* revision or cross appeal or in any other manner. The present writ has arisen out of the appeal preferred by the Petitioner against the assessment order. It is a settled principle of law that a person, in an appeal preferred by him and in the absence of any cross appeal, cannot be put into a condition which is worse off than what the Assessee was before preferring the appeal.

(v) Accordingly, any remand for reassessment has a possibility of putting the Petitioner in a condition worse off than the Petitioner was before preferring the appeal against the assessment order. Reference in this regard may be made to the case of ***Jawal Neco Limited VS Commissioner of Customs; reported in 2015 (322) E.L.T. 561*** wherein the Hon'ble Apex Court emphasized this point when it held that appellant cannot be worse off by reason of filing appeal.

16. In view of the aforesaid discussions and judicial pronouncements, it is held that Section 18(8) (ix) of the JVAT Act is not applicable in the case of this Petitioner. Consequently, the instant Writ Petition is allowed and the Judgment and order dated 28.07.2021 passed by the Ld. Commercial Taxes Tribunal in JR 07 of 2016 (Period 2012-13VAT) (Annexure-6), order dated 19.10.2016 of the Joint Commissioner of Commercial Taxes (Appeal) passed in Appeal Case No. SG-VAT-A-43/2015-16 (Annexure-3) and also the Assessment order dated 05.10.2015 passed by the Respondent No.2 wherein the Input Tax Credit, amounting to Rs. 15,98,658/- was disallowed to the petitioner (Annexure-2), are hereby, quashed and set-aside.

(Aparesh Kumar Singh, J.)

I agree

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)

Jharkhand High Court, Ranchi
Dated/23rd March, 2022
Amardeep/AFR