**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ**
**IN THE INCOME TAX APPELLATE TRIBUNAL,**
**'' B'' BENCH, AHMEDABAD**
**(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT**
**And**
**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./**ITA No. 549/AHD/2019**
**निर्धारण वर्ष/Asstt. Year: 2014-15**

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| Starline Organics Pvt. Ltd.,<br>301, Panchdeep Complex,<br>Mayur Colony,<br>Nr.Mithakhali Six Road,<br>Navrangpura,<br>Ahmedabad-380009.<br><br>**PAN: AAKCS1789H** | Vs. | Principal Commissioner of Income Tax-4,<br>Ahmedabad. |
| **(Applicant)** | | **(Respondent)** |

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| Assessee by | : | Shri S.N. Soparkar, Sr. Advocate |
| Revenue by | : | Shri Aarsi Prasad, CIT.D.R |

सुनवाई की तारीख/**Date of Hearing : 16/12/2021**
घोषणा की तारीख /**Date of Pronouncement: 23/12/2021**

**आदेश/O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Principal Commissioner of Income Tax-4, Ahmedabad, dated 22/02/2019 arising in the matter of assessment order passed under s. 263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-15.

2. The only issue raised by the assessee is that the learned PCIT erred in holding that the assessment order passed under section 143(3) of the Act is erroneous insofar prejudicial to the interest of revenue.

3. The facts in brief are that the assessee in the present case is a private limited company and engaged in the business of trading of Unrefined Sulphur. The case of the assessee was selected under scrutiny and therefore the assessment was made under section 143(3) of the Act dated 7th September 2016 at Rs. 28,64,460/- under normal computation of income and at Rs. 28,27,027/- under MAT provisions.

3.1 Subsequently, the learned PCIT on the verification of assessment records found that the assessee has shown purchases from the following parties:

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|---|---|---|
| *i)* | *Essar Oil Ltd.* | *Rs.10,82,88,782/-* |
| *ii)* | *Kiri Industries Ltf.* | *Rs.27,03,375/-* |
| *iii)* | *Reliance Industries Ltd.* | *Rs.18,19,67.838/-* |
| *iv)* | *Reliance Industries Ltd. SEZ* | *Rs.7,53,40,823/-* |

3.2 The purchases made by the assessee from Reliance Industries Ltd SEZ for ₹ 7,53,40,823/- were shown as deemed import and therefore the assessee claimed to have incurred an expense of ₹ 1,15,01,177/- towards the custom duty which was shown part of the purchases. Thus the assessee in effect has shown total purchases in the profit and loss account at ₹ 37,98,01,995/- ( purchases of ₹ 36,83,00,818/- plus custom duty of ₹ 1,15,01,177/-).

3.3 Likewise the assessee has shown the purchases in the VAT return filed in form No. 205 for the year under consideration at ₹ 38,67,15,920/- having the following breakup:

- Purchase ₹ 36,83,00,818/-
- Input vat ₹ 1,47,32,064/-
- Additional Input vat ₹ 36,83,038/-

3.4 From the above purchases, it was revealed that the assessee has taken VAT input credit on the whole value of purchases at ₹ 36,83,00,818/-.

3.5 As per the learned PCIT the amount of deemed import was not shown in the VAT return which implies that all the purchases shown by the assessee are in domestic purchases. Thus, there was no occasion for the assessee for claiming the import duty as shown in the profit and loss account along with the purchases. But this fact has not been verified by the AO during the assessment proceedings. Accordingly, the learned Principal CIT proposed to hold the order of the AO as erroneous insofar prejudicial to the interest of revenue vide notice dated 15th January 2019.

3.6 The assessee in response to such notice vide letter dated 23rd January 2019 submitted that the variation between the purchases shown in the profit and loss account and VAT return is arising for the reason that the amount of custom duty was not shown in the VAT return. Likewise the input credit on the purchases was not shown in the profit and loss account. To this effect, the assessee filed reconciliation statement which is reproduced as under:

| *As per tax audit report* | | *As per Sales-tax return* | *Difference* |
|---|---|---|---|
| *Purchase* | *36,83,00,818* | *36,83,00,818* | *0* |
| *Custom duty* | *1,15,01,177* | *0* | *-1,15,01,177* |
| *Input Vat* | *0* | *1,47,32,064* | *+1,47,32,064* |
| *Input Addl. Vat* | *0* | *36,83,038* | *+36,83,038* |
| | *37,98,01,995* | *38,67,15,920* | *69,13,925* |

3.7 The assessee also contended that the above information was also verified by the AO during the assessment proceedings framed under section 143(3) of the Act.

3.8 The assessee further submitted that the amount of purchases from Reliance Industries Ltd SEZ represents the deemed import on which custom duty was paid. The assessee in support of its contention filed the necessary documents such as bill

of entry about the custom duty on the purchases from the Reliance Industries Ltd SEZ.

3.9 However, the learned Principal CIT disregarded the contention of the assessee by observing that the assessee has claimed the credit of input tax on all the purchases including the purchases from Reliance Industries Ltd SEZ. As per the learned PCIT the assessee has not disclosed any information in VAT return about the purchases representing the deemed import. This fact has not been verified by the AO during the assessment proceedings. Accordingly, the learned principal CIT concluded that the assessment framed under section 143(3) of the Act is erroneous insofar prejudicial to the interest of Revenue on account of non-verification. Thus the learned PCIT set aside the assessment order with the direction to the AO to frame the fresh assessment after making the necessary enquiries as discussed above.

4. Being aggrieved by the order of the learned PCIT, the assessee is in appeal before us.

5. The learned AR before us filed a paper book running from pages 1 to 125 and compilation of case laws and contended that there is no difference between the purchases shown by the assessee in the profit and loss account viz a viz in the VAT return. Such difference, was arising on account of the custom duty shown in the profit and loss account which was not shown in the VAT return. Likewise, the tax paid on the purchases was not shown in the profit and loss account but the same was shown in the VAT return. To this effect, the learned AR filed a reconciliation statement which is available on record.

5.1 The learned AR besides the above also contended that the assessment was framed by the AO after necessary verification. For this purpose, the learned AR drew our attention on the notice issued by the AO under section 142(1) of the Act which

is placed on pages 48 to 52 of the paper book. Likewise, the learned AR also drew attention on the replies made by the assessee in response to the notice issued under section 142(1) of the Act which is placed on pages 53 to 55, along with the annexures of the paper book.

5.2 In view of the above, the learned AR submitted that there is no error in the assessment framed by the AO under section 143(3) of the Act which is causing prejudice to the interest of Revenue. Therefore, the learned AR prayed before us not to sustain the order of learned PCIT.

6. On the contrary, the learned DR vehemently supported the order of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. There is no dispute to the fact that the assessee has shown purchases from Reliance Industries Ltd. SEZ amounting to Rs. 7,53,40,823/ which is the deemed import. The assessee on such purchases has claimed to have paid custom duty of Rs. 1,15,01,177/- only which was shown along with the purchases.

7.1 The Principal CIT was of the view that in case of deemed import, there is no VAT liability and therefore the question of claiming the VAT input on such purchases does not arise. However, the assessee in the VAT return has claimed input VAT on such purchases which is not possible. As per the learned Principal CIT, this fact has not been verified during the assessment proceedings. Thus the order passed by the AO is erroneous insofar prejudicial to the interest of revenue. The relevant finding of the learned PCIT on this issue reads as under:

> *He has also submitted that the purchases from Reliance Industries Ltd. SEZ Unit are imports acid customs duty has been paid on the same and bill of entries are provided, This is a fresh submission and before the A.O., neither any submission*

*was made that purchases from Reliance Industries Ltd. SEZ is imports and customs duty has been paid on those purchases. However, VAT cannot be paid on imports and assessee purchases from Reliance Industries Ltd. SEZ also. In any case, the A.O did not conduct any enquiry into the various discrepancies in the purchases and the imports, as claimed during the course of present proceedings, before the assessment was completed. Therefore, the assessment is erroneous and since the purchases have not been properly considered <md if customs duty is paid on purchases from Reliance Industries Ltd. SEZ, how the assessee can get VAT input tax credit @ 4% on all purchases, including purchases from Reliance Industries Ltd SEZ, since no VAT is paid on import purchase. Therefore, the assessment is erroneous and prejudicial to the interest of revenue and apparently, excessive deduction on account of import duty, VAT etc. has been allowed.*

7.2 However, the learned AR at the time of hearing before us has filed the copies of the invoices of the deemed import demonstrating that the assessee has paid VAT on such purchases. Therefore, the assessee has claimed the benefit of input VAT in the VAT return on the deemed import. The copies of the invoices on sample basis are placed on record.

7.3 On perusal of the details filed by the assessee, we note that the assessee has incurred VAT expenses on the deemed import which are eligible to be set off against the VAT output. Thus the finding of the learned principal CIT that there was no VAT input available to the assessee on the deemed import appears to be incorrect.

7.3 But the question arises whether the assessee has claimed VAT input on the deemed import as an expense in the profit and loss account. This fact, to our understanding, has not been verified by the AO. At the time of hearing the learned AR has also not brought anything on record suggesting that the assessee has not claimed VAT input on the deemed import as an expense in the profit and loss account. For this limited purpose, we hold that the order passed by the AO is erroneous insofar prejudicial to the interest of revenue. Accordingly, we do not find any reason to interfere in the finding of the learned Principal CIT and therefore we

uphold the same. Hence the ground of appeal of the assessee is dismissed.

8. In the result, the appeal of the assessee is **dismissed**

**Order pronounced in the Court on 23/12/2021 at Ahmedabad.**

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| **Sd/-** | **Sd/-** |
| **(RAJPAL YADAV)** | **(WASEEM AHMED)** |
| **VICE PRESIDENT** | **ACCOUNTANT MEMBER** |

**(True Copy)**

Ahmedabad; Dated 23/12/2021
*Manish*