IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2015

CORAM

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.10060 of 2015
and
M.P.No.1 of 2015

M/s.N.M.Zackriah & Co.,
rep.by its Authorised Signatory
Mr.P.Akbar Basha ...Petitioner

Vs.

The Assistant Commissioner(CT)
Purasaivakkam Assessment Circle,
No.59, Tailors Road, Kilpauk,
Chennai-600 014 ...Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the respondent in TIN:33090481841/2013-14 dated 17.3.2015, quash the impugned proceedings dated 17.3.2015 in so far as it relates to "proportionate reversal of ITC in respect of opening stock" and further direct the respondent to pass order in accordance with the provisions of Section 18(1) read with rule 11(2) after affording the petitioner a reasonable opportunity to show cause and afford personal hearing before passing the order rejecting refund claim made in form W.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.S.Kanmani Annamalai,
Addl. Govt. Pleader [Taxes]

ORDER

This writ petition has been filed by the petitioner to quash the impugned order passed by the Assistant Commissioner (CT), Purasawalkam Assessment Circle, Chennai, the respondent herein in TIN 33090481841/2013-14 dated 17.03.2015 in so far as it relates to proportionate reversal of ITC in respect of opening stock and further direct the respondent to pass order in accordance with the provisions of Section 18(1) read with Rule 11(2) after affording the petitioner a reasonable opportunity to show cause and afford personal hearing before passing the order rejecting refund claim made in Form W.

2.The learned counsel for the petitioner would submit that the petitioner being a manufacturer and exporter of finished leathers, shoe upper and shoes since 40 years and registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and also under the provisions of the Central Sales Tax Act, for the purpose of manufacture of leather etc., the petitioner firm purchased the leather, chemicals, dyes etc., from the registered dealers within the State against bill on payment of consideration through cheque payment. The seller being registered dealer under the Act, charges tax separately. Thereafter, finished goods are sold within the State, interstate and also exported to foreign countries. The entire sale is reported in the monthly returns along with payment of admitted tax. As per Section 18(1)(i) of the Act, any dealer effecting zero rated sale is entitled to refund of tax or input tax credit. In the present case, since the goods are directly exported, the petitioner is entitled to refund of tax. Therefore, the petitioner has filed Form W for the claim of refund and the rule directs the authority to pass orders within 90 days from the date of receipt of Form W. Though the petitioner has filed Form W, without properly considering the same, the respondent herein rejected the case of the petitioner specifically mentioning that no claim was made in Form W in respect of opening stock. As a result, he has come to the conclusion that the net amount eligible for refund is Rs.5,93,313/- instead of Rs.14,09,656/-. When the respondent is discharging quasi judicial function under the Act, he should have atleast issued a notice calling upon the petitioner to clarify whether they have filed Form W for the claim of refund. Without even issuing any notice or calling for personal hearing, the respondent has arbitrarily come to a wrong conclusion and passed the impugned order. Therefore, the impugned order is liable to be set aside, the learned counsel pleaded.

3.Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent would submit that if the petitioner is aggrieved on the sole premise that there was no application of mind by the respondent with regard to refund of claim on the basis of Form W, he has not sufficiently proved such approach of the respondent in the impugned order.

4.Heard the submissions of the learned counsel on either side and perused the records.

5.A mere perusal of the Form W filed by the petitioner for refund shows that they have rightly filed Form W for assessment year 2013-2014 to the Assistant Commissioner of Commercial Taxes by providing all the particulars of the goods exported and also the particulars of input tax paid. The petitioner has also claimed refund of Rs.14,09,656/- (Rs.21,79,994/- less VAT and CST Rs.4,97,016/- and ITC reversal for CST sales Rs.2,73,322/- = Rs.14,09,656/-). But there is no whisper about any other particulars in the impugned order passed by the respondent. Moreover, the respondent has come to the conclusion that the petitioner has not even made any claim in Form W in respect of opening stock. Therefore, I am of the considered opinion that the respondent, while passing the impugned order, has not applied his judicious mind. Hence the impugned order is liable to be set aside and accordingly, it is set aside. The matter is remanded back to the respondent and the respondent is directed to consider the case of the petitioner afresh on merits and in accordance with law and pass a speaking order within a period of four weeks from the date of receipt of a copy of this order. It is needless to mention that for the months of February 2014 to December 2014 also, the respondent is directed to pass a speaking order within the stipulated time, if the petitioner has filed Form W.

6.In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

mmi

To

The Assistant Commissioner(CT)
Purasaivakkam Assessment Circle,
No.59, Tailors Road, Kilpauk,
Chennai-600 014

1 CC to Mr.V.Sundareswaran, Advocate SR.No. 21165

1 CC to the Spl. Government Pleader [T], SR.No. 21185

W.P.No.10060 of 2015

MP (CO)
PSI (18.05.2015)