IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.19208 and 19209 of 2015
AND M.P.NO.1 OF 2015

Faizan Tanning Industry,
represented by its Partner,
Jawed Ahmed
21 & 26, SIPCOT Industrial Complex,
Ranipet - 632 403. ... Petitioner in both Peittioner

Vs.

The Assistant Commissioner (CT),
Ranipet, (Sipcot). ... Respondent in both petitioner

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of certiorari to call for the records on the files of the respondent herein in TIN:33354362571/2012-13, dated 30.04.2015, quashing the same.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mr.ANR.Jayapratap,
Govt.Advocate (TAxes)

COMMON ORDER

These writ petitions have been filed by Faizan Tanning Industry represented by its Partner Jawed Ahmed challenging the impugned orders dated 30.04.2015 issued by the Assistant Commissioner (CT), Ranipet (SIPCOT) Assessment Circle in TIN Nos.33354362571/2012-13 and 33354362571/2013-14, in and by which the respondent confirming the proposals dated 15.10.2014 and levied reversal of ITC under Section 19(2)(V) of the TAN VAT Act, 2006, (in short, ''Tamil Nadu Value Added Tax Act'') for the years 2012-2013 and 2013-14 and also issued a notice of penalty under Section 27(3) of the TN VAT Act for the same amount.

2. Assailing the impugned orders, learned counsel for the petitioner submitted before this Court that the petitioner, being a registered dealer on the file of the respondent both under the TN VAT Act, 2006 and Central Sales Tax Act, 1956 (in short, ''C.S.T.Act, 1956''), has filed return under Central Act in Form I and declarations in Form C. Therefore, deemed assessments were completed for the years 2012-2013 and 2013-14 by the respondent herein. While so, by Act No.28 of 2013, Section 19(2)(v) is amended with effect from 11.11.2013 in which there is an availment of ITC only in excess of 3%. As the petitioner has complied with the provision from the

month of December 2013 during the assessment year 2013-14, the respondent ought not to have issued notice to reverse the I.T.C at 3%. The respondent, according to learned counsel for the petitioner, in the notices, has proceeded on the basis of the entire inter-State value that has to be estimated for the purpose of reversal of ITC both for the years 2012-2013 and 2013-14. Subsequently, the petitioner responded and explained that the amendment is only from 11.11.2013. Therefore, the proposed reversals of ITC for the year 2011.12 is not in accordance with the provisions of the Act and also for the year 2013-14, since it is applicable only from 11.11.2013.

3. Therefore, the grievance of the petitioner is that although the above fact was duly brought to the notice of respondent about the reversal of ITC to an extent of Rs.1,67,326/- in January, 2014 return for the assessment year 2013-2014, the petitioners were given the impression that the respondent would be issued with another notice and an opportunity of hearing be given, more particularly, when they have filed in writing about the non-applicability of the reversal during the year 2012-2013 and 2013-2014 upto 10.11.2013. But all of a sudden, the impugned orders were issued by the respondent. Therefore, it indicates the non-application of mind. Hence the impugned orders are liable to be interfered with.

4. Learned Government Advocate appearing for the respondent submits that no doubt the amendment by Act No.28 of 2013 was brought in under Section 19(2)(v) with effect from 11.11.2013 making clear that the availment of ITC is in excess of 3%. But the petitioner has not filed any reply to the notices issued by the respondent. Therefore, if the petitioner is directed to file a reply the the notices issued, the respondent would be in a position to consider and pass orders on merits and in accordance with law.

5. It appears that the petitioner has not filed reply to the notices dated 15.10.2014. Though the petitioner has made a contention that the amendment was brought in under Section 19(2)(v) with effect from 11.11.2013, in view of the fact that the petitioner has not filed reply to the notices dated 15.10.2014 for the years 2012-13 and 2013-14, he is directed to file his reply within two weeks from the date of receipt of copy of this order. On filing such detailed replies, the respondent is directed to consider the same and pass orders on merits and in accordance with law after giving personal hearing to the petitioner, if necessary.

6. With this observation, the writ petitions stand disposed of and the impugned orders stand set aside. No costs. Consequently, the connected miscellaneous petitions stand closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Ranipet, (Sipcot).

+1 cc to Mr.N.Inbarajan, Advocate,SR.32496

+1 cc to Government Pleader,SR.33011.

Rj(co)
krd 15/7

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