IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.27277 of 2015

M/s Emerald Star Tourism Pvt. Ltd., [Petitioner]
rep. by its Director Sachin Dholakia
83-A, Gray's Hill,
Coonoor, Nilgiris District.

Vs

The Assistant Commissioner (CT) FAC
Coonoor Assessment Circle
Coonoor, Nilgiri [Respondent]

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records of the respondent in his proceedings in Ref.No.584/2012, E.Reg.Sl.No.295 dated 17.7.2015 and quash the same as illegal and direct the respondent to issue refund voucher for Rs.34,087/-.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.S.Manoharan Sundaram, AGP(T)

O R D E R

Heard the learned counsel for the petitioner and Mr.S.Manoharan Sundaram, learned Additional Government Pleader (Taxes) for the respondent and with their consent, the main writ petition is taken up for disposal.

2. This writ petition is filed challenging the order of the respondent in his proceedings in Ref.No.584/2p012, E.Reg.Sl.No.295 dated 17.7.2015 and to direct the respondent to issue refund voucher for Rs.34,087/-.

3.1 The petitioner being the dealer and Pre-exporter of tea is a registered dealer under the TNVAT and CST Acts and assessee on the file of the respondent. The petitioner submits that they purchase the goods Tea at the auction centres by paying the tax and effected pre export sales to exporters under Section 5(3) of the CST Act. The petitioner further averred in the petition that their claim for refund of ITC by filing form W as per Section 18 of the TNVAT Act read with Rule 11(2) of the TNVAT Rules was granted.

3.2. The petitioner further claims that they have filed Form W application for refund of ITC of Rs.34,087/- on the pre export sales made for the month of April 2012 before the respondent on 07.11.2012. The petitioner also filed Form H export invoice, Bill of lading, Bank certificate in proof of pre export sales. However, the respondent issued a notice dated 20.03.2015 pointing out certain defects, on verification of Form W and connected records filed for the month of April 2012. The petitioner submitted their reply dated 02.05.2015 by objecting the same by relying on the decision of the Hon'ble Supreme Court reported in 36 VST 1 (State of Karnataka vs. Azad Coach Builders), decisions of the Kerala High Court reported in 79 STC 243 (K.G.Vijayan vs. State of Kerala) and 52 STC 40 (Deputy Commissioner vs. Sheth Brothers) and the decision of the Madras High Court rendered in 80 STC 199 (1991) Ram Bhadur Takkur (P) Ltd., vs. Coffee Board, Bangalore and requested to grant personal hearing so as to enable them to explain in detail with reference to the documents filed. However, without considering the objections filed in its proper perspective and without adducing any reasons and without affording an opportunity of personal hearing, the respondent has rejected the claim of refund by stating that the export of tea by the exporters is not the same tea as sold by the petitioner and has returned the Form W application with connected records by the impugned proceedings dated 17.07.2015. Aggrieved over the same, the petitioner has come before this Court.

4. Admittedly, the petitioner filed Form W for certain refund in respect of transactions related to Tea, claiming as export sales. After receipt of Form W, a notice dated 20.03.2015 was issued, denying the claim of the petitioner, thereby directed the petitioner to file necessary objections. Detailed objections in this regard was also filed by the petitioner inviting the attention of the respondent to the decision reported in 36 VST 1 as well as 79 STC 243 and 52 STC 40, 80 STC 199. But, without considering the detailed objections, yet another notice dated 17.07.2015 re-producing the earlier order dated 20.03.2015 was issued, rejecting the claim by returning Form W as well as connected records.

5. It is obvious that the respondent has not considered the objections touching the subject matter filed by the petitioner on merits as well as law, but, has simply returned the papers without adducing proper and cogent reasons touching the legality in this issue. Hence, I am of the view that the impugned order is liable to be set aside.

6. Accordingly, the impugned order dated 17.07.2015 is set aside and the matter is remitted back to the respondent for passing orders afresh on the basis of the objections filed by the petitioner as well as the decisions cited by the petitioner in this regard, after affording an opportunity of personal hearing to the petitioner. Such exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

The writ petition is disposed of with the above directions. No costs.

rg

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT) FAC
Coonoor Assessment Circle
Coonoor, Nilgiri

+ 1 cc to the Special Govt.Pleader (T) High Court, Madras SR 52450

+ 1 cc to M/s.S.Ramanathan, Advocate SR 52519

mp(co)
prk8/10

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