IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2015

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No.29623 of 2015
and M.P.No.1 of 2015

Winner Leather Creation [Petitioner]
Rep by its Proprietor G.K.Anandhan
57/B Sidco Industrial Complex
Sipcot Ranipet

Vs

The Assistant Commissioner (CT)
Ranipet (Sipcot) Assessment Circle
Ranipet

[Respondent]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certirorari calling for the records on the files of the respondent herein in TIN 33654362503/2012-13 dt 30.4.2015 and quash the same.

For petitioner : Mr.N.Inbarajan

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

O R D E R

This writ petition has been filed challenging the order of the respondent dated 30.04.2015 relating to the assessment year 2012-13.

2. The petitioner, being a registered dealer on the file of the respondent, are carrying on the business of manufacturing of finished leather in their unit at SIDCO INDUSTRIAL ESTATE, SIPCOT, RANIPET. Returns were filed by them both under the TNVAT Act 2006 and Central Sales Tax Act, 1956. For the assessment year 2012-13, assessment was completed under the CST Act, in which the entire taxable turnover was covered with C Form on which the respondent levied tax at 2% by proceedings dated 10.04.2015. Similarly, assessment order was issued under Section 22(2) of the TNVAT Act on the self assessment basis, accepting the returns filed by the petitioner. Thereafter, invoking Section 19(2)(v) of the Act, a notice dated 15.10.2014 was issued

demanding the differential ITC at 3% on the estimated purchase value and directed them to file their objections, and the petitioner filed their objections, stating that the demand is not correct and not in accordance with the provisions of the Act and the reversal of ITC to an extent of 3% from November 2013 onwards was already made and they effected inter-state sales only to registered dealers falling under Section 8(1) of the CST Act which were covered by form C declarations. In the meantime, for the assessment year 2012-13, self assessment was passed on 07.04.2015 and CST Assessment was also issued on 30.04.2015. However, on 30.04.2015, the impugned order for 2012-13 under TNVAT Act was served on them, in which, reversal of ITC under Section 19(2)(V) of the TNVAT Act was confirmed, without considering the reply filed by them which was acknowledged on 16.02.2015. Hence, the petitioner is before this Court.

3.1 The learned counsel for the petitioner submitted that the impugned order demanding the difference of 3% ITC on the purchase value relating to inter-state sales invoking Section 19(2)(V) of the Act, is without any authority of law, since 19(2)(V) was amended by Act 28/2013 only and there is no jurisdiction to invoke the said Section prior to November 2013 and therefore, passing such an impugned order is beyond the scope of the TNVAT Act.

3.2 The learned counsel for the petitioner further submits that even though reply was filed on 12.02.2015, meeting out all the queries raised in the notice relating to the purchase of goods which were exported, referring to Rule 11(2) of the TNVAT Rules, 2007, which was acknowledged on 16.02.2015, the same was not considered before passing the impugned order and hence there is violation of principles of natural justice.

3.3 It is his further contention that the petitioner was not given an opportunity of being heard and therefore, the impugned order is liable to be quashed.

Based on these, the learned counsel for the petitioner has sought for allowing of the writ petition.

4. The learned Additional Government Pleader (Taxes) justified the order passed by the department.

5. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

6. Originally considering the transactions relating to CST for the assessment year 2012-13, an oder of assessment came to be passed, granting the relief as prayed for. Subsequently, the same turnover and the corresponding purchases relating to Form C declarations were sought to be brought in for the assessment year 2012-13 relating to TNVAT Act, as taxable turnover. Concluding that the refund claim made out in respect of the transactions related to C forms is not eligible,

the respondent sought to include the same for the purpose of reversal of ITC, invoking Section 19(2)(V) of the TNVAT Act for the assessment year 2012-13 and passed the impugned order dated 30.04.2015, reversing ITC to the tune of Rs.2,69,629/- for the said period. During the said assessment period, viz., 2012-13, there is no power vested with the respondent to reverse the ITC, since the amended provision of Section 19(2)(V) of the TNVAT Act, 2006 by Act 28 of 2013 came into effect only from 11.11.2013. Hence, to this extent, the impugned assessment order needs interference. Admittedly, the explanation of the petitioner dated 16.02.2015 is also not considered by the respondent.

7. Hence, the impugned order dated 30.04.2015 in respect of the assessment year 2012-13 is set aside and the matter is remanded to the respondent for passing appropriate orders, in the light of the provisions of the Act, after affording due opportunity to the petitioner. The said exercise shall be completed within six weeks from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.
Rg

Sd/-
Assistant Registrar (Admn.,I)

/True Copy/

Sub-Assistant Registrar

To

The Assistant Commissioner (CT)
Ranipet (Sipcot) Assessment Circle
Ranipet

+1 C.C. To MR.N.Inbaraja, Advocate in SR.NO.51228

+1 C.C. To Special Government Pleader (Taxes) in SR.NO.51372

W.P.No.29623 of 2015

RSI(CO)
sd : 26/10/2015

21.09.2015