IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2015

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No.29624 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 33654362503/2013-14 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 2013-14.

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 2013-14, 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, deemed assessment was issued on 07.04.2015. However, on 30.04.2015, the impugned order 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.

3.4. Further according to the learned counsel for the petitioner, pointing out the facts with regard to jurisdiction as well as legality, the petitioner submitted a petition on 28.07.2015 under Section 84 of the TNVAT Act and the same is kept pending.

4. The learned Additional Government Pleader (Taxes) appearing for the respondent submitted that since the petitioner has filed a petition under Section 84 of the TNVAT Act, a direction may be given to the respondent to consider the same and pass orders on merits and in accordance with law, within a specified period.

5. Heard both sides.

6. Admittedly, in response to the notice dated 15.10.2014, a reply was filed by the petitioner 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, also enclosing Form W along with copies of invoices as well as Form F. The said reply was acknowledged on 16.02.2015, which is evident from the typed set of papers. However, the impugned order came to be passed on 30.04.2015, without considering the objections filed by the petitioner is the contention of the learned counsel for the petitioner.

7. Since the petition under Section 84 of the Act is pending before the respondent and in view of the submission made by the learned Additional Government Pleader (Taxes) that a direction may be given to the respondent to dispose of the said petition under Section 84 of the Act within a time frame, this writ petition is disposed of by directing the respondent to consider and pass orders on the petition filed by the petitioner on 28.07.2015 under Section 84 of the TNVAT Act, on merits and in accordance with law, after affording due opportunity 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. It is made clear that till the disposal of Section 84 petition, no recovery proceedings be initiated as against the petitioner. 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

W.P.No.29624 of 2015

RSI(CO)
sd : 26/10/2015