IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.03.2015

CORAM

THE HONOURABLE MR. JUSTICE M.DURAISWAMY

W.P.No.6640 of 2015
and M.P.No 1 of 2015

The Essa Hosiery Mills
[Petitioner]
Rep. by its Managing Partner
S.Sadiq Ali
No.10 Pushpa Nagar
Kangeyam Cross Road
Tiruppur-641 604.

Vs

The Assistant Commisisoner(CT)
Bazaar Circle Tiruppur. [Respondent]

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records on the files of the respondent in TIN 33062422876/ 2010-11 dated 20.2.2015 and quash the same as being without jurisdiction and authority of law.

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.Manoharan Sundaram, AGP(T)

ORDER

Heard Mr.R.Senniappan, learned counsel for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader, who takes notice for the respondent.

2. By consent of both the counsels, the writ petition itself is taken up for final hearing at the admission stage.

3. The petitioner has filed the above writ petition to issue a writ of certiorari to call for the records of the respondent dated 20.02.2015 and to quash the same as being without jurisdiction and authority of law.

4. It is the case of the petitioner that a notice was issued by the authority dated 20.02.2014, in which they were informed that the amounts already adjusted towards balance of arrears for the assessment year 2009-2010 and 2010-2011 is proposed to be reversed

for the reason that the said adjustment cannot be possible to be made for the demand emanated for the preceding assessment year notwithstanding the fact that Section 19(17) of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as "the Act") read with Rule 10(b) of the Tamil Nadu Value Added Tax Rules, 2007 (herein after referred to as "the Rules") has clearly given right to the petitioner to adjust the arrears out of the excess payment for any assessment years and only after this explanation through his letter dated 19.02.2014, the order of assessment dated 28.03.2014 was made. Further, the petitioner contended that once order was made after adjusting the arrears out of the excess payment, cannot be reversed for the reason that such adjustment cannot be made possible for the arrears emanated for the preceding assessment year. Further, according to the petitioner, in these circumstances, the impugned notice dated 20.02.2015 is liable to be quashed, as being not in conformity with Section 19(17) of the Act and Rule 10(b) of the Rules.

5. The learned Additional Government Pleader appearing for the respondent submitted that the impugned order passed by the respondent is liable to be set aside in view of the provisions of Section 19(17) of the Act.

6. Having regard to the submissions made by the learned counsel on either side, since the impugned order passed is contrary to the provisions of Section 19(17) of the Act, the impugned order dated 20.02.2015 is quashed and the writ petition stands allowed. No costs. Connected miscellaneous petition is closed.

rg

-s/d-
Assistant Registrar(CS-II)
Dt:11/3/2015

True Copy

Sub-Assistant Registrar

To

The Assistant Commisisoner(CT)
Bazaar Circle Tiruppur.

+ 1 cc to Mr.R.Senniappan, Advocate SR 13350

jsv(co)
prk11/3

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