IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.03.2015

CORAM

The Honourable MR. JUSTICE M.DURAISWAMY

W.P.No.6710 of 2015
and
M.P.No.1 of 2015

Hi-Tech Chemical
Rep by Managing Partner
K-G Jothis Kumar
Lakshmanapuram Post
Pappireddy Taluk Harur
Dharmapuri District [Petitioner]

Vs

The Commercial Tax Officer
Harur Assessment Circle
Harur [Respondent]

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records on the files of the respondent in Ref. TIN 33573341719/2010-2011 dt 19.12.2014 and quash the same in so far as the issue related to inputs loss during production is concerned and further direct the respondent to pass order afresh in accordance with direction issued by this Honourable Court in W.P. No.34410/2014 dt 23.12.2014 (Tvl. Sivasakthi Exports Vs. Commercial Tax Officer Palladam Assessment Circle Palladam and two others).

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.Cibi Vishnu,
Additional Government Pleader

ORDER

Heard the learned counsel for the petitioner and Mr.Cibi Vishnu, learned Additional Government Pleader(T), 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 above writ petition has been filed by the petitioner to issue a writ of certiorarified mandamus to call for the records on the file of the respondent dated 19.12.2014 and to quash the same insofar as the issue related to inputs loss during production is concerned and further direct the respondent to pass orders afresh in accordance with direction issued by this Court in W.P. No.34410 of 2014 dated 23.12.2014.

4. This Court in W.P.No.34410 of 2014 dated 23.12.2014 in the case of Tvl. Sivasakthi Exports Vs. Commercial Tax Officer Palladam Assessment Circle Palladam and two others, following the orders passed in a batch of writ petitions in W.P.No.13901 of 2013 etc. batch dated 26.11.2014, disposed of the writ petition in terms of the order passed in the said batch of writ petitions.

5. This Court in W.P.No.13901 of 2013 etc. batch dated 26.11.2014 has passed the following order:-

> "63. In the result,
>
> (1) the challenge to the impugned circular is held to be unnecessary since the circular is a non statutory circular and is in the nature of guideline and the prayer for quashing the circular is rejected.
>
> (2) Section 18 of the TNVAT Act is not an independent or a separate stand alone provision under the provisions of TNVAT Act but subject to other provisions of the Act including Section 19 of the VAT Act.
>
> (3) For the reasons assigned, it is not sufficient for a dealer claiming refund under Section 18(2) of the Act to show that he has paid input tax on the goods purchased; that those goods are used in the manufacture and nothing more but there is duty upon the dealer to satisfy the Assessing Authority that the claim is not hit by any of the restrictions or conditions contained under Section 19 of the VAT Act. In this regard, it is essential for the Assessing Authority to embark upon the fact finding exercise to ascertain the quantum of loss of the goods which were purchased on which tax was paid vis-a-vis the goods manufactured from and out of the goods purchased and to examine as to whether they fall within any of the restrictions contained in

Section 19 of the VAT Act. The Assessing Officer has to conduct an exercise by which it is to be ascertained as to whether the representation made by the dealer is justified and is not hit by any any of the restrictions and conditions contained in Section 19 and in particular Section 19(9) of the VAT Act.

(4) It is held that the Assessing Authorities are not justified in adopting uniform percentage as invisible loss and calling upon the dealer to reverse the input tax credit availed to that extent. Consequently, all notices issued to the petitioner for reopening and all consequential order passed reversing the input tax credit to the extent of either 4% or 5% or on adhoc per centage stands set aside. However, liberty is granted to the concerned Assessing Officer to issue appropriate show cause notices to the petitioners clearly setting out under what circumstances they propose to revise or call upon the petitioner to reverse refund sanctioned and after inviting objections proceed in accordance with law.

(5) The undertaking given by the dealer in Form W is with regard to information furnished for the purpose of verification by the Assessing Officer under Rule 11(2) of the VAT Rules for being entitled to refund under Section 18(2). Therefore, it is not as if the Act does not provide a remedy in the event of a wrong or erroneous refund sanctioned when Section 18 cannot be treated as an independent provision but subject to restrictions and conditions under Section 19 of the VAT Act.

64. The Writ petitions are disposed of accordingly. No costs. Connected MPs are closed.

Accordingly, this writ petition is disposed of following the above terms. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (J)

True Copy

Sub Assistant Registrar

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To

The Commercial Tax Officer
Harur Assessment Circle
Harur

1CC to M/s. Senniappan, Advocate SR 13758

1CC to Spl. Government Pleader SR 13876

W.P.No.6710 of 2015

RSK [CO]
PSI 21.03.2015