IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.01.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.68 of 2015 and M.P.No.1 of 2015

Sohan Starch Products,
Represented by its Proprietor,
K.Sohanraj Chopra ..Petitioner

Vs.

The Assistant Commissioner (CT)
Leigh Bazaar Circle,
Salem. ..Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the files of the respondent in his CST702147/2012-13 dated 14.11.2014 and to quash the same and direct the respondent to re-do the assessment in accordance with the provisions of the Act permitting the petitioners to avail the ITC on the excess ITC Rs.12,15,699/- .

For Petitioner :Mr.N.Inbarajan

For Respondent :Mr.A.R.Jayapratap
Government Advocate (T)

O R D E R

With the consent of either side the Writ Petition itself is taken up for final disposal at the admission stage.

2.The petitioner has filed this writ petition for the aforesaid relief. The grievance of the petitioner is that the excess I.T.amount has got to be adjusted against outstanding tax due amount. Since it has not been done, the petitioner has come forward with the present writ petition, challenging the impugned order dated 14.11.2014 and to quash the same and direct the respondent to re-do the assessment in accordance with the provisions of the Tamil Nadu Value Added Tax Act, 2006, (in short, the Act) permitting the petitioner to avail the ITC on the excess ITC.

3. Section 19(17) of the Act it reads as under:

If the input tax credit determined by the assessing authority for a year exceeds tax liability for that year, the excess may be adjusted against any outstanding tax due from the dealer.

A perusal of the above, it reveals that the Input Tax Credit determined by the Assessing Authority, if exceeds tax liability, the excess can be adjusted against the outstanding tax due from the assessee.

4. It is a specific contention of the petitioner that the respondent while reversing the ITC in revision proceedings has completely overlooked this aspect.

5. In view of the provisions extracted above and since the respondent has not adjusted the excess tax amount, while setting aside the impugned order dated 14.11.2014, the respondent is directed to make assessment afresh in accordance with provisions of the Act by permitting the petitioner to avail the ITC on the excess of tax amount, within a period of four weeks from the date of receipt of a copy of this order.

In view of the above said observations, this writ Petition is allowed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kkd

To

The Assistant Commissioner (CT)
Leigh Bazaar Circle,
Salem.

+1 C.C. to Mr.N.Inbarajan, Advocate, Sr.No.4537.

+1 The Government Pleader (T)High Court, Madras. Sr.No.4817.

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M.P.No.1 of 2015

EV(CO)
KP(24.02.2015)