In the High Court of Judicature at Madras

Dated : 14.6.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.19336 of 2015 & MP.No.1 of 2015

M/s.E Land Fashion India Private Limited, rep.by its Authorized Signatory Airsetti Gopal Rao ...Petitioner

Vs

The Commercial Tax Officer,
Mandaveli Assessment Circle,
Chennai-28. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in TIN 33500762382/2013-14 dated 31.7.2014 and the consequential order of rectification in TIN 33500762382/2013-14 dated 16.3.2015, quash the same as illegal, arbitrary and ultra vires of provisions of Section 18 read with Rule 11 of the Tamil Nadu Value Added Tax Act, 2006 and further direct the respondent to consider the claim of refund of input tax credit with respect to 'zero rated sales' filed in Form W through e-filing.

For Petitioner : Mr.V.Sundareswaran
For Respondent : Mr.Manohar Sundaram, AGP

ORDER

Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax, 2006 (hereinafter called the Act), has filed this writ petition challenging the order of assessment dated 31.7.2014 as well as the order rejecting the petitioner's petition under Section 84 of the Act dated 16.3.2015.

3. The short issue, which falls for consideration, is as to whether the petitioner had filed Form W within the time prescribed under the Act. The specific case of the petitioner is

that they filed Form W by way of e-filing and it is well within the time limit prescribed under Rule 11 of the Tamil Nadu Value Added Tax Rules, 2007. The petitioner has produced acknowledgments, which were generated from the computer to establish the filing of Form W within the time stipulated.

4. The petitioner's case is that after receipt of the pre-assessment notice dated 8.7.2014, they sent a representation dated 21.7.2014 requesting some more time to be granted to submit their explanation.

5. Though the respondent has referred to the petitioner's letter dated 21.7.2014, he proceeded to frame the assessment ex parte stating that the petitioner has not filed their objections. The approach of the respondent is not proper, since the Assessing Officer should have either accepted the request for adjournment or should have rejected the same, intimated the petitioner and thereafter proceeded to frame the assessment. However, the petitioner filed a petition under Section 84 of the Act. This petition has been rejected by the order dated 16.3.2015 by referring to Section 18(3) of the said Act and stating that Form W was not filed by the petitioner within the time prescribed nor have they produced any proof of having done so.

6. The learned Additional Government Pleader elaborately referred to the factual position and based on the written instructions given by the respondent vide letter dated 3.9.2015, submitted that the respondent was justified in passing the impugned orders, as, in terms of Section 18(3) of the Act, the credit shall stand lapsed to the Government. It was further contended that the dealer did not produce invoices and other related documents within 180 days from the date of making zero rated sales as prescribed under Rule 11(2) of the said Rules.

7. From the para wise remarks given by the respondent to the various contentions raised in the affidavit filed in support of the above writ petition, it is relevant to take note of the stand taken by the respondent to the ground raised by the petitioner in ground No.4. In ground No.4 of the affidavit, the petitioner has stated that the respondent ought to have seen that when both monthly returns and Form W claim are filed by e-filing, there is no merit in accepting Form I monthly returns filed and disputing the filing of Form W for refund. The reply given by the respondent to the said averment in their para wise comments is as follows :

> 'It is true that the petitioner filed Form W through online within the time frame and obtained acknowledgment therefor and this fact has not been denied by the respondent.'

8. From the above, it is clear that the respondent is well aware of the fact that Form W has been filed by the petitioner within the time frame. If that be the case, the observations contained in both the impugned orders are wholly erroneous.

9. Accordingly, the writ petition is allowed, the impugned orders are set aside and the matter is remitted back to the respondent to consider Form W, which has been filed by the petitioner online and which has been admitted by the respondent himself to have been filed within the time frame. The above direction shall be complied with within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the above MP is closed.

S/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer, Mandaveli Assessment Circle,
Chennai-28.

+ 1 cc to Mr.V.Sundareswaran, Advocate SR 32229

+ 1 cc to Special Govt.Pleader (Taxes) SR 32587

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