IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-02-2016

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

W.P.Nos.41038, 41039, 41040 and 41041 of 2015
and
M.P.Nos.1 of 2015 (4 in Nos.)

Tvl.Firoze Fabricators,
rep by its Managing Partner,
K.P. Khader Hussain,
No.D-2 & D-3, " Sidco" Industrial Estate,
Mettur Dam - 636 402,
Salem District

.... Petitioner in all the writ petitions

vs

The Assistant Commissioner, (CT),
Sankagiri Assessment Circle,
Sankagiri,
Salem District

..... Respondent in all the writ petitions

Writ Petitions filed under Article 226 of the Constitution of India praying this Court to issue Writs of Certiorari, to call for the records on the files of the respondent in TIN Nos.33703240234/2009-10 dated 25.11.2015 (in respect of W.P.No.41038 of 2015); 33703240234/2010-11 dated 26.11.2015 (in respect of W.P.No.41039 of 2015); 33703240234/2011-12 dated 27.11.2015 (in respect of W.P.No.41040 of 2015) and 33703240234/2012-13 dated 3.12.2015 (in respect of W.P.No.41041 of 2015) and quash the same as being without jurisdiction and authority of law.

For petitioner : Mr.R. Senniappan

For respondent : Mr.Kanmani Annamalai
AGP (Taxes)

COMMON ORDER

The petitioner has filed the above writ petitions to issue Writs of Certiorari, to call for the records on the files of the respondent in TIN Nos.33703240234/2009-10 dated 25.11.2015 (in respect of W.P.No.41038 of 2015);33703240234/2010-11 dated 26.11.2015 (in respect of W.P.No.41039 of 2015); 33703240234/2011-12 dated 27.11.2015 (in respect of W.P.No.41040 of 2015) and 33703240234/2012-13 dated 3.12.2015 (in respect of W.P.No.41041 of 2015) and quash the same as being without jurisdiction and authority of law.

2. According to the petitioner, the rectified returns, without changing the turnover, which were filed with an intention to remove the doubts, were an attempt to rectify the mistakes done under the category of turnover and could not be rejected under the impression of " delay in filing the revised return" for claiming ITC, however, the order accepting the revised return by the then assessing authority dted 13.2.2014 should have been accepted and restored as it is in this regard.

3. The petitioner also contended that the respondent should have considered the excise duty mentioned in the invoice is nothing, but exempted excise duty, which cannot be regarded as turnover for the purpose of assessment to levy of tax and penalty. The petitioner further contended that the respondent should have granted the claim of ITC, since the petitioner made payment of tax at the rate of 12.5% even in the absence of declarations in form "H". The petitioner further contended that the respondent should have considered the reversal of ITC/exemption on the value of materials supplied by the customer, namely TVl.Thermax Ltd., Pune.

4. Mr. Kanmani Annamalai, learned Additional Government Pleader (Taxes), appearing for the respondent, submitted that except the first contention, the other three contentions should be agitated by the petitioner before the appellate authority and sofar as the first contention is concerned, the revised return, by the then Assessing Authority dated 13.02.2014, can be confirmed.

5. On a perusal of the materials available on record, it is clear that the petitioner has got an appeal remedy available to them to challenge the the following issues:

> (i) the respondent should have considered the excise duty mentioned in the invoice is nothing, but exempted excise duty, which cannot be regarded as turnover for

the purpose of assessment to levy of tax and penalty.

(ii) the respondent should have granted the claim of ITC, since the petitioner made payment of tax at the rate of 12.5% even in the absence of declarations in form "H".

(iii) the respondent should have considered the reversal of ITC/exemption on the value of materials supplied by the customer, namely TVl.Thermax Ltd., Pune.

The above referred three issues can only be decided by the appellate authority.

6. Sofar as the Order dated 13.02.2014, passed by the Assitant Commissioner (CT), (FAC), Omalur is concerned, as rightly pointed out by the learned Additional Government Pleader, it has to be confirmed. Accordingly, the Order dated 13.02.2014, passed by the Assistant Commissioner (CT), (FAC), Omalur is confirmed and the petitioner is given liberty to file an appeal sofar as the above referred three issues are concerned.

7. Mr.R. Senniappan, learned counsel appearing for the petitioner, sought four weeks time for filing an appeal before the appellate authority. Accordingly, the petitioner is granted four weeks time for filing an appeal from the date of receipt of copy of this order.

8. With these observations, all the writ petitions are disposed of. No costs. Consequently, connected MPs are closed.

9. Registry is directed to return the original order to the counsel for the petitioner enabling him to file an appeal.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner, (CT),
Sankagiri Assessment Circle,
Sankagiri,
Salem District.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.10140
+1cc to the Government Pleader, S.R.No.10168

W.P.Nos.41038 to 41041 of 2015

ca(CO)
srg(23/02/2016)