IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.6.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8499 of 2016

M/s.Ellak Chem Industries Pvt.Ltd.,
rep.by its Authorised Signatory
K.G.Jothis Kumar
Manjavadi Village,
Pappaireddi Taluk,
Dharmapuri District ... Petitioner

Vs

The Commercial Tax Officer,
Harur Assessment Circle,
Harur, Dharmapuri District ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the file of the respondent in TIN 33563341288/2013-14, dated 21.01.2016 and quash the same as being without jurisdiction, authority of law and contrary to the circular issued by the Principal Secretary/Commissioner of Commercial Taxes, Chepauk, Chennai-600 005, in Letter No.Acts.Cell-V/5197/2015 dated 27.5.2015.

For Petitioner : Mr.R.Seenniappan

For Respondent : Mr.Manokaran Sundaram,A.G.P.

ORDER

Heard Mr.R.Seenniappan, learned counsel for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader, who accepts notice for the respondent and with the consent of parties, the writ petition itself is taken up for final disposal.

2. The learned counsel on either side submit that the issue involved in the writ petition is covered by the decision of this Court in the case in Interfit Techno Products Ltd., vs. Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another [(2015) VST 389(Mds)], wherein, this Court considered the issue regarding invisible loss and as to how the assessing authority has to proceed.

3. At this stage, it would be useful to refer to the operative portion of the judgment in Interfit Techno Products (supra), which would run thus:

"60.In the result.-

(1) . . . . .

(2) . . . .

(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 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 of 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 four percent or five percent or on ad hoc percentage 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."

4. In the light of the above decision and as conceded by either side, the writ petition stands allowed and the impugned order is set aside. The matter is remanded to the respondent/assessing officer, who shall proceed afresh by following the directions given above. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

msk

To

The Commercial Tax Officer,
Harur Assessment Circle,
Harur, Dharmapuri District

+1cc to the Government Pleader, S.R.No.33554

SKS(CO)
EU(29/06/2016)