IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2017

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THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

WP.Nos.4091 to 4097 of 2017

M/s.ABI Showatech (India) Limited,
Represented by its Senior Vice President- CP,
67, Chamiers Road, Chennai 600 028.
...Petitioner (all petitions)

Vs.

The Assistant Commissioner (CT)
Kotturpuram Assessment Circle,
46, Greenways Road,
Chennai 600 028. ...Respondent (all petitions)

Prayer: Petition under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus to direct the respondent to modify the impugned refund order in TIN33770860543/2011-12 dated 23.11.2015 for the month of October, November, December 2011 & January 2012, TIN33770860543/2012-13 dated 23.11.2015 for the month of April & May 2012, TIN33770860543/2013-14 dated 23.11.2015 for the month of October, November, December 2013 & February 2014 and rectification order dated 25.11.2016 and to sanction refund of the value of Capital Goods in terms of section 18(1) and refund pertaining to wastage.

For Petitioner:: Ms.Radhika Chandra Sekhar

For Respondent:: Mr.K.Venkatesh
Government Advocate

C O M M O N   O R D E R

Heard Ms.Radhika Chandra Sekhar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent.

2. With the consent of the learned counsel on either side, the writ petition itself is taken up for disposal.

3. The petitioner is engaged in the manufacture and export of automobile components and registered as a dealer under the provisions of Tamil Nadu Value Added Tax Act, 2006 and Central Sales Tax Act, 1956 on the file of the respondent/The Assistant Commissioner (CT), Kotturpuram Assessment Circle. The petitioner seeks for a direction upon the respondent to modify the orders of refund dated 23.11.2015 and the orders of rejecting the applications filed by the petitioner for rectification dated 25.11.2016 and consequently to sanction refund of the value of 'Capital Goods' in terms of Section 18(1) of the TNVAT Act and the refund pertaining to wastage and to pass other appropriate orders.

4. The petitioner filed refund claims before the respondent on various dates for the relevant assessment years, the respondent vide separate orders dated 23.11.2015 accepted the refund claim in part and has disallowed a portion of the claim under two heads, namely “Wastage as per Section 19(9) of the Act at 2 %” and “Less Capital Goods”. The petitioner was at a loss to understand as to how these figures were disallowed as the petitioner was not put on notice that the respondent proposed to disallow a portion of the refund claim. Since there were no reasons setforth in the orders dated 23.11.2015, the petitioner filed applications under Section 84 of the TNVAT Act for rectification of the orders dated 23.11.2015.

5. It is no doubt true that the petitioner did not immediately file the applications but preferred the applications after about a period of 10 months. Be that as it may. The respondent was bound to consider the said applications, since the TNVAT Act does not prescribe an outer time limit for filing applications under Section 84 of the Act. In any event, the applications filed under Section 84 of the Act, after about 10 months cannot be stated to be grossly delayed, especially, when the orders dated 23.11.2015 did not assign reasons as to why part of the refund claim has been disallowed. In the application under Section 84 of the Act, the petitioner has pointed out the above facts and requested the respondent to consider their submission and rectify the error. They also pleaded for an opportunity of personal hearing. With regard to adopting a uniform percentage towards wastage at 2%, the petitioner contended that the same is incorrect in the light of the decision of this Court in Interfit Techno Products Ltd., Vs. PS/CCT and another in WP.No.13901 of 2013 etc., batch dated 26.11.2014 reported in 2015(81) VST 389 (Mad). On receipt of the applications filed under Section 84 of the Act, it appears that though specifically, the petitioner sought for an opportunity of personal hearing, it is not been granted. The

respondent, by the impugned orders dated 25.11.2016 rejected the petitions merely on the ground that there is no valid reason to re-open the refund claim under Section 84 of the Act.

6. In my considered view, the reason assigned by the respondent in the orders dated 25.11.2016 for rejecting the applications filed under Section 84 of the Act is incorrect. Admittedly, in the order dated 23.11.2015, while granting partial relief to the petitioner, the respondent disallowed the substantial portion of the refund claim. The order does not stated as to why such disallowance has been made. There is no explanation in the order dated 23.11.2015 as to how, the respondent adopted uniform percentage of wastage at 2%. In the case of the Interfit Techno Products, this Court considered the correctness of the decisions of various assessing officers in adopting uniform percentage towards production loss or popularly known as invisible loss. The Court found that there cannot be such uniform percentage of loss being adopted in all manufacturing process regardless of the product but process loss or invisible loss has to be ascertained on a case to case basis. The operative portion of the order reads as follows:

> "63. ...
> (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% on 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"

7. If the above decision is applied to the facts of the case then this Court would have no option except to hold that adoption of uniform percentage of wastage is incorrect. When the respondent has not assigned reasons for disallowing part of refund claim while passing order dated 23.11.2015, it is sufficient to hold that the order suffers from error apparent on the face of the record and necessarily rectifiable under Section 84 of the Act. Therefore, the respondent was bound to exercise the power in a judicious manner and consider the case of the petitioner, as putforth by them, in their applications filed under Section 84 of the Act dated 28.10.2016. Thus, having noticed that the orders dated 23.11.2015 does not assign reason

for disallowance of part of the refund claim and such disallowance was made without notice or opportunity to the petitioner, to that extent, the orders dated 23.11.2015 calls for interference.

8. Accordingly, the relief to be granted in these writ petitions is moulded as hereunder:

The orders passed by the respondent dated 25.11.2016 and the orders of refund dated 23.11.2015 in so far as it disallow the part of the refund claim under the heads "Wastage as per Section 19(9) of the Act at 2 %" and "Less Capital Goods" are set aside and the matter is remanded to the respondent for fresh consideration. The respondent is directed to issue showcause notice to the petitioner as to why she proposed to disallow part of the refund claim. The showcause notice should contain full particulars and details. The petitioner should be granted 15 days' time to file their objections and after receipt of the objections, the respondent shall afford an opportunity of personal hearing and pass a speaking order on merits and accordance with law. Accordingly, these writ petitions are disposed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT)
Kotturpuram Assessment Circle,
46, Greenways Road,
Chennai 600 028.
+1cc to Special Government Pleader (Taxes) sr.64650

WP.Nos.4091 to 4097 of 2017

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