IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.16844 of 2017
and W.M.P.No.18295 of 2017

Sundaram Fasteners Limited
Represented by its Chief Financial Officer
S.Meenakshisundaram,
98-A, VII Floor
Dr.Radhakrishnan Salai, Mylapore,
Chennai - 600 004. ... Petitioner

..Vs..

The Deputy Commissioner (CT)-I
Large Tax Payers Unit,
34, Marshalls Road, Egmore,
Chennai - 600 008. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the respondent herein in TIN/33050741047/2014-2015 dated 29.05.2017, quashing the same.

For Petitioner : Mr.N.Prasad

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.N.Prasad, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent. With the consent on either side, the writ petition itself is taken up for disposal.

2.The petitioner who is the registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) on the file of the respondent, namely, Large Tax Payers Unit, is before this Court challenging an order dated 29.05.2017, by which the input tax credit claimed by the petitioner has been reversed on the ground that the petitioner has effected sales to SEZ Units situated outside Tamil Nadu for a value of Rs.11,74,30,971/- and calculated the proportionate ITC reversal at Rs.15,23,919/-. This reversal has been done by invoking Section 19(5)(a) of the TNVAT Act. The petitioner's contention is that the impugned order has been passed without issuing any notice and without affording an opportunity of personal hearing. Record of the proceedings show that a notice was issued to the petitioner by the then Assessing Officer on 11.08.2016 proposing to reverse the input tax availed by the petitioner in respect of stock transfer. The petitioner submitted their objections on 31.08.2016 stating that they have been regularly reversing ITC in excess of 5% on the value of the stock transfers made to outside Tamil Nadu Units in their monthly returns as contemplated under the TNVAT Act. Further, they have also considered the turnover of stock transfers made outside Tamil Nadu State and proportionate ITC reversals in the Form WW filed for the year 2014-15 and hence, the question of reversal of ITC on the same value does not arise. Further, they pointed out that the proposed turnover and the ITC reversal did not agree with the stock transfer value declared in Form WW. Further, the petitioner requested the then Assessing Officer to verify the record and drop the proceedings and they sought for an opportunity of personal hearing before passing any order in furtherance to the notice dated 11.08.2016. Nothing transpired thereafter, but the petitioner received another notice dated 21.09.2016 proposing to reverse the input tax credit for the year 2014-15 under Section 19(5)(a) of the TNVAT Act. The petitioner was granted seven days time to submit their objections and also to avail the opportunity of personal hearing.

3.The petitioner submitted their objections on 27.09.2016 apart from other things contending that it is evident from the returns and Form WW filed for the year 2014-15, when the total exempted sales itself was Rs.29,03,231/-, then the proposal to reverse the ITC to the tune of Rs.13,93,111/- is locally incorrect and reversal of ITC proposed at 50% of the exempted sales effected during the year cannot be done. Further it was stated that the proposed reversal is arbitrary and there is no basis for such reversal. Once again the petitioner sought for an opportunity of personal hearing. Without reference to the earlier notices dated 11.08.2016 and 21.09.2016 and without reference to the petitioner's objections dated 31.08.2016 and 27.09.2017, the respondent has passed the impugned order.

4.This Court is unable to comprehend as to how the Assessing Officer attached to a Large Tax Payers Unit could have passed the impugned order without reference to the earlier proceedings and the nature of objections raised by the petitioner, that too, when the petitioner specifically sought for a personal hearing. The change of officer cannot be a reason for violating the procedure required to be followed under the TNVAT Act. The principles of natural justice requires that the dealer is given adequate and reasonable opportunity to putforth their submissions. The earlier notice clearly stated that the petitioner will have an opportunity of personal hearing. In such circumstances, the respondent was not justified in passing the impugned order without reference to any of the earlier proceedings and only referring to an assessment under the Central Sales Tax Act for the year 2014-15. Thus, it is evidently clear that the impugned order is ex facie illegal, arbitrary and liable to be set aside.

5.For all the above reasons, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration, who shall carefully peruse the records, issue comprehensive notice to the petitioner, afford an opportunity to the petitioner to submit their objections, hear them in person and pass a reasoned order on merits and in accordance with law. The above direction be complied with within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

cse

To

The Deputy Commissioner (CT)-I
Large Tax Payers Unit,
34, Marshalls Road, Egmore,
Chennai - 600 008.

+1cc to the Special Government Pleader (Taxes) Sr. 46441
+1cc to Mr.N.Inbarajan, Advocate Sr. 46264

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KK(CO)
VR(12/07/2017)