BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.07.2017
CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD) No.12553 of 2017

Tvl. Sri Sabari Tex,
Represented by its Prorprietrix,
No.19, 40 Feet Jeeva Road,
Kattabomman Nagar,
Sellur,
Madurai District. ... Petitioner

Versus

The Assistant Commissioner (CT)
Chokkikulam Assessment Circule,
Madurai District. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the notice of the respondent dated 06.06.2017 rejecting the petitioner's request for refund under Rule 11(2) of the TNVAT Rules 2007 for the period from April 2013 to March 2014.

For Petitioner : Mr.V.Perumal.
For Respondent : Mr.Raja Karthikeyan,
Additional Government Pleader.

ORDER

Mr.Raja Karthikeyan, learned Additional Government Pleader, takes notice for the respondent. By consent, the Writ Petition is taken up for final disposal.

2. The impugned notice dated 06.06.2017 has been questioned in the present writ petition by Sri Sabari Tex represented by its Proprietrix on the ground that in the guise of issuing notice, dated 06.06.2017, which is impugned herein, the Assistant Commissioner, Commercial Tax, Chokkikulam has come to the conclusion that as per Rule 12(1) of the CST Rules 1957, the petitioner has failed to file separate Form H Declaration in respect of goods delivered in each quarter of a financial year and therefore, the expert sales are not covered by proper records. On this basis, the claim of the petitioner under Section 11(2) of the TNVAT Rule 2007 was liable to be rejected.

3.The learned counsel for the petitioner would submit that Form 'H' is not mandatory for claiming exception, if the assessee is otherwise able to prove that the conditions of Section 5(3) are satisfied. Hence, the stand of the respondent in rejecting refund on the ground of default in filing Form 'H' is not sustainable. Taking support from the order of the Hon'ble Division Bench of Andhra Pradesh High Court in the case of Mahabaleswarappa and sons v. Assistant Commissioner (LTU) and others reported in MANU/AP/1258/2011, the learned counsel for the petitioner would submit that the order, which is impugned is liable to be set aside.

4. Per contra, the learned Additional Government Pleader would submit that the notice has indicated that the expert sales are not covered by proper records. Therefore, the respondent has come to conclusion that the definite claim by the petitioner under Rule 11 (2) of the TNVAT Rule 2007 is liable to be rejected. Therefore, it is not peculiar for the petitioner to approach the respondent by giving an explanation.

5. In the order cited supra, the Division Bench has held as follows:

> "2.Section 5 of the Act requires a dealer to furnish a declaration in the prescribed form duly signed by the exporter to whom the goods are sold so as to claim the benefit as "sales for export". Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 ("The Rules", for brevity) prescribes the method, manner and modalities of furnishing various forms/declarations by a dealer to claim reduced rate of tax or goods for the purpose of export, sub-rule (10)(a) of rule 12 of the Rules is relevant. This mandates a dealer to file a declaration signed by the exporter in form H to the prescribed authority up to the time of assessment by the assessing authority. There is no dispute that the petitioner, indeed, submitted form H when it filed the value added tax returns before the first respondent which were accepted. Thus, the question is does the law prohibit filling of declaration in form H covering the entire annual transaction or reading of rule 12(10)(a) of the Rules does not, in any manner, support the view that machinery provision has to be read in a manner that is workable. If rule 12(10(a) of the Rules is is interpreted as requiring a dealer to submit declarations in H forms for each transaction it may, in some cases, even frustrate the contract which the dealer entered into with the exporter. Even a plain and literal reading would not admit to any such interpretation that a dealer should submit declarations in H forms quarterly. For these reasons, we are inclined to set aside the impugned endorsements.

3.Accordingly, the impugned endorsements are set aside. The second respondent is now required in law to consider the revision taking into consideration all the material filed by the petitioner including the declarations in H forms. We record the submission of the counsel for the petitioner that they have now also filed the declarations in H forms for quarterly periods. The writ petitions shall stand disposed of accordingly. There shall be no order as to costs."

6. Recording the statement, this Court directs the petitioner to give his explanation to the impugned notice dated 06.06.2017, within a period of three weeks from the date of receipt of copy of this order. On receipt of the explanation to the said impugned notice by the petitioner, the respondent shall consider in terms of the Division Bench order (supra) and pass appropriate final orders thereafter.7. With the above directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar
(Records)

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Chokkikulam Assessment Circle,
Madurai District.

+1cc to M/S. V.PERUMAL, Advocate, SR.No.63872.
+1cc to Special Government Pleader, SR.No.63931.

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