IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 06.02.2018
Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.Nos.8054 to 8057 of 2012
and
W.M.P.Nos.1 & 2 of 2012

W.P.No.8054 of 2012: 8055, 8056, 8057/12

M/s. Eastern Chrome Tanning Corporation Limited,
Rep.by its Director Mr.K.Ehsan Ahmed. ...Petitioner
(in all WP's)

Vs.

1.The Assistant Commissioner (CT)
Nungambakkam Assessment Circle,
Taluk Office Building, Spur Tank Road,
No.88, Mayor Ramanathan Road,
Chetpet, Chennai - 600 031.

2.The Commissioner of Commercial Taxes,
Ezilagam, Chepauk,
Chennai - 600 005.

3.The Commercial Tax Officer, Group-II,
Enforcement (Central), PAPJM Buildings,
Greams Road, Chennai - 600 006. ...Respondents
(in all WP's)

Prayer in W.P.Nos.8054, 8056 & 8057 of 2012:
Writ Petitions, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent in VAT/33800461129/2006-07, 2007-08 and 2008-09 respectively quash the impugned proceedings dated 30/06/2011 and further direct the first respondent to refund the amount of Rs.19,34,375/-; Rs.1,09,58,958/- and Rs.77,23,740/- respectively relating to the "Input Tax Credit" on the sales made to 100% Export Oriented Unit being "zero rated sales"made by the petitioner as envisaged under Section 18 of the Tamilnadu Value Added Tax Act, 2006.

Prayer in W.P.No.8055 of 2012: Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent in VAT/33800461129/2006-07 R.C.No.431/A3/2012(vat Audit) quash the impugned proceedings dated 10/03/2012 and further direct the first respondent to consider the representations dated 10/08/2011 and thereafter, take action in accordance with the provisions of the Tamilnadu Value Added Tax Act, 2006.

For Petitioner (in all WP's)	:	Mr.V.Sundareswaran
For Respondents (in all WP's)	:	Mr. M. Hariharan, Additional Government Pleader

COMMON ORDER

Heard Mr.V.Sundareswaran, the learned counsel appearing for the petitioner and Mr.Hariharan, the learned Additional Government Pleader appearing for the respondents.

2. These Writ Petitions have been filed by M/s. Eastern Chrome Tanning Corporations Ltd. Three of the Writ Petitions, i.e. W.P.Nos. 8054, 8056 & 8057 of 2012 are filed challenging the assessment orders passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) for the assessment years 2006-07, 2007-08 and 2008-09. The fourth Writ Petition (W.P.No.8055 of 2012 has been filed by the petitioner challenging the recovery notice.

3. The major issue involved in the assessments are, whether the sales effected by the petitioner to 100% Export Oriented Unit (EOU) will fall under the definition of zero rated sales in terms of Section 18 of the TNVAT Act, 2006. This issue was considered by this Court, in Emerald Stone Export versus. Assistant Commissioner (CT), FAC, Pudukottai I Assessment Circle, Pudukkotai, reported in [2012] 52 VST 286(Mad) and the question was answered in favour of the dealers in the following terms:-

> "17. The fact that sale of goods in this case was in the course of export of goods out of the territory of India is amplified by the documents submitted by the petitioner in support of the refund application by referring to the export invoice, bill of lading, etc.
>
> 18. Section 5(3) of CST Act, 1956, starts with a non obstante clause and overrides section 5(1) of the Act. Therefore, the sale preceding the export sale will be sale in the course of export. Therefore, the sale to the 100 per cent EOU is the last sale preceding the sale occasioning the export of the goods out of the territory of India and consequently, it will be sale in

the course of export attracting section 5 (3) of the CST Act, 1956. The provision of section 5(3) of the CST Act, 1956 specifically covers a sale in this case.

19. In this case, the petitioner has sold the goods to Tab India Pvt.Ltd., a 100 per cent EOU and the documents submitted by the petitioner to the competent refund authority clearly satisfied the requirements that the sale was for the purpose of export of goods outside the territory of India by the EOU and it is in the course of export. Section 18(1) of the TNVAT Act, 2006 and section 5 (3) of the CST Act,1956, clearly apply to the facts of the petitioner's case. The sale in this case falls under section 5(3) of the CST Act, 1956, and then section 18 (1) of the TNVAT Act, gets attracted.

20. In such view of the matter, by virtue of section 18(1) of the TNVAT Act,2006 the petitioner is entitled to input-tax credit or refund of tax if it is a sale specified under sub-sections (1) and (3) of section 5 of the CST Act, 1956, by treating it as zero rated sale. The petitioner will therefore be entitled to the refund in this case. The petitioner is justified in seeking refund of the tax treating the sale as zero rated sale.

21. The impugned order accepts that the sale was effected to 100 per cent EOU. No provision of law has been shown as to how the sale to 100 per cent EOU cannot be termed as zero rated sales. Since the petitioner has established that the sale was in the course of export supported by the bill of lading, export invoice, etc., (i.e) the documents in support of the export, the Department cannot contend that section 18 of the TNVAT Act, 2006 will not apply.

22. The term 100 per cent EOU is self-explanatory and it has not been properly appreciated by the authority. All

that section 18 of the TNVAT Act,2006, provides for is that sale should be in the course of export. If the EOU has made the export and proof of export has already been brought on record, section 18 of the TNVAT Act,2006, has to automatically apply. The impugned order does not even state as to how a sale to an 100 per cent EOU which is meant for export promotion, does not fall under section 18(1) of the TNVAT Act, 2006. This is a total misconception and misreading of the provisions of the Act."

4. The question would be as to whether the above referred decision would be applicable of the facts and circumstances of the present case.

5. The respondent proceeds on the basis that, it is an exempted sale, and therefore, Input Tax Credit availed by the petitioner has to be reversed. The petitioner, on receipt of the impugned assessment orders, which are themselves revised orders, submitted Petition under Section 84 of the TNVAT Act for revision of the assessment with a request to consider the issue and make a fresh orders. The petitioner would state that the said Petition for rectification dated 10.08.2011 was presented in person by the Accounts Manager of the petitioner Mr. R.Sudarsanam, by appearing before the first respondent. Though the first respondent had received the Petitions, no acknowledgement was given. However, it appears that, orally the Accounts Manager was informed that due consideration would be given to the petitioner. However, since no action was initiated on the said Petitions, in the mean time, recovery notice was issued, the petitioner is before this Court. The transaction is to whether the sale effected by the petitioner to 100% EOU has to be first examined by the Assessing Officer, for which, the petitioner appears to have produced the granting guidance issued in favour of EOU. If the petitioner has sufficient documents to show that the sales were made to 100% EOU, then, the petitioner would be entitled to the benefit in terms of Section 18 of the TNVAT Act. Thus, without considering this aspect, the respondent cannot be proceeded with the assessment. Unfortunately, the dealer did not file objections. However, it is not in dispute that the petitioner has reversed the ITC, which they have availed in respect of the transaction with 100% EOU.

6. Thus, considering the factual position, this Court is of the considered view that the assessments should be redone.

7. Accordingly, the Writ Petitions in W.P.Nos.8054, 8056 & 8057 of 2012 are disposed of, by directing the petitioner to treat the impugned assessment orders as show cause notices and filed their objections within a period of 15 days from the date of receipt of a copy of this order, after which, the respondent shall afford an opportunity for personal hearing and re-do the assessment in accordance with law. Consequently, W.P.No.8055 of 2012 is allowed and the impugned order, attaching the petitioner's bank account is quashed. No costs. Resultantly, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

klt/sd

TO:

1.The Assistant Commissioner (CT)
Nungambakkam Assessment Circle,
Taluk Office Building, Spur Tank Road,
No.88, Mayor Ramanathan Road,
Chetpet, Chennai - 600 031.

2.The Commissioner of Commercial Taxes,
Ezilagam, Chepauk,
Chennai - 600 005.

3.The Commercial Tax Officer, Group-II,
Enforcement (Central), PAPJM Buildings,
Greams Road, Chennai - 600 006.

+1cc to Mr.V.SUNDARESWARAN, Advocate, S.R.No. 9453
+1cc to the Government Pleader, S.R.No. 9929

W.P.Nos.8054 to 8057 of 2012

TR(14/03/2018)