IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2018
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.793 of 2012 & M.P.No.1 of 2012

M/s.Vasanth Products, rep. by its
Partner, Mr.George Suresh,
No.3, Arumugam Street,
Anna Salai, Chennai-2. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Anna Salai I Assessment Circle,
621, Anna Salai, Chennai-6. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records on the files of the respondent in TIN-33130600062/2009-2010 dated 17.11.2011 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mrs.G.Dhanamadhri,
Government Advocate

O R D E R

Heard Mr.D.Vijayakumar, learned counsel for the petitioner and Mrs.G.Dhanamadhri, learned Government Advocate for the respondent.

2.The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act") and Central Sales Tax Act, 1956 is aggrieved by the impugned order of assessment dated 17.11.2011, for the year 1999-2000 under the TNVAT Act.

3.Two issues arise for consideration. The first issue is whether with regard to stock variation, the respondent was correct in levying tax at 12.5%. As could be seen from the revision notice dated 28.02.2011, what was proposed is only 4% and this was paid by the petitioner even prior to issuance of the show cause notice. Therefore, the respondent could not have levied tax at 12.5% without affording an opportunity to the petitioner. The second issue is whether the petitioner has effected zero rated sales.

4.The allegation was that the claim made by the petitioner was not duly supported by records. Hence, in the revision notice, the respondent proposed to assess the petitioner at 12.5%. The petitioner submitted their objections and also produced the copy of the certificate issued by the Joint Development Commissioner in favour of one M/s.Same-Deutz-Fahr India (P) Ltd. The respondent has verified the certificate and came to the conclusion that it is 100% export oriented unit, which is exempted from notification and not zero rated sale and therefore, adopted formula and levied taxes.

5.The question would be, if the respondent accepts that the unit to which the petitioner had business transaction is a 100% export oriented unit, then the petitioner is entitled to take umbrage under Section 18(2) of the TNVAT Act.

6.So far as exempted goods are concerned, those are the goods fall under the 4th Schedule to the TNVAT Act and exempted by the Government by notification from time to time. Therefore, the respondent ought to have afforded an opportunity to the petitioner before adopting a formula and treating the petitioner's transaction as an exempted sale and not as zero rated sale. Consequently, levy of penalty under Sections 27(3) & 27(4) of the TNVAT Act requires to be interfered with. Hence, the three issues, namely with regard to rate of tax on stock difference; whether the petitioner is entitled to input tax credit on the ground that whatever effected is zero rated sale; and whether there is justification on the levy of penalty under Sections 27(3) & 27(4) of the TNVAT Act, require to be re-considered by the assessing officer.

7.Accordingly, this writ petition is partly allowed, the findings rendered by the assessing officer in the impugned assessment order on the above three grounds are set aside and the matter is remanded to the respondent for fresh consideration, who shall afford an opportunity of personal hearing to the authorized representative of the petitioner and re-do the assessment in accordance with law on those three heads. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

abr

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Anna Salai I Assessment Circle,
621, Anna Salai, Chennai-6.

+1cc to Mr.D.Vijayakumar, Advocate, S.R.No.1741

+1cc to the Government Pleader, S.R.No.2173

W.P.No.793 of 2012

SAI(CO)
RRK(05/02/2018)