In the High Court of Judicature at Madras

Dated : 06.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.26507 and 26508 of 2013 &
MP.No.1 of 2013

M/s.Texport Industries P.Ltd.,
rep.by its Manager ...Petitioner

Vs

1.The Assistant Commissioner (CT) (FAC), Tirupur Rural Circle, Tirupur. ...R1 in both WPs.

2.The Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam, Chennai. ...R2 in WP.No. 26507 of 2013

3.The Commercial Tax Officer, Special Circle-II, Tirupur. ...R3 in WP.No. 26507 of 2013 & R2 in WP.No.26508 of 2013

PETITIONS under Article 226 of The Constitution of India praying for the issuance of (i) a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent herein in VAT Cell/Roc.No./37188/2011 (Circular No.22/ 2011) dated 20.10.2011, quash the same and consequently forbear the 1st and 3rd respondents from reducing 5% of the refund claim of the petitioner on the estimated invisible loss of input yarn and visible loss and deny the claim of refund of non-filing of bank reconciliation certificate (WP.No.26507 of 2013) and (ii) a Writ of Certiorari to call for the records of the 2nd respondent in TIN 33582384178 dated 18.3.2013 and quash the same (WP. No.26508 of 2013).

For Petitioner : Mr.B.Raveendran

For Respondents: Mr.M.Hariharan, AGP

COMMON ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

2. The petitioner filed W.P.No.26507 of 2013 challenging the circular issued by the third respondent in Circular No.22/2011 dated 20.10.2011 and to forbear the respondents from reducing 5% of the refund claimed by the petitioner on the estimated invisible loss of input yarn and visible loss and deny the claim of refund of non-filing of bank reconciliation certificate.

3. In W.P.No.26508 of 2013, the petitioner challenged the notice dated 18.3.2013, by which, the petitioner has been directed to pay a sum of Rs.1,09,802/- stating that the said amount being ineligible amount claimed as refund or in the alternative to file related documents.

4. The learned counsel for the petitioner submits that the issue relating to computation of percentage of invisible loss came up for consideration before this court in several writ petitions and this Court ultimately held that there cannot be any uniform percentage of loss that can be calculated and that the manufacturing process of a particular industry has to be verified to ascertain the percentage of invisible loss or manufacturing loss. In other words, this Court held that there cannot be an ad hoc percentage that can be adopted by the Assessing Officers whenever the dealer claims that there is a manufacturing loss on a particular product.

5. In the instant case also, the impugned proceedings seeks to fix an ad hoc percentage of 5%.

6. The learned Additional Government Pleader submits that the order impugned in W.P.No.26508 of 2013 is only a show cause notice.

7. On a reading of the said notice dated 18.3.2013, this Court finds that it is not a show cause notice in the strict sense, but it is a demand-cum-show cause notice. Therefore, this Court is of the view that the proper exercise should be conducted by the Assessing Officer to ascertain the percentage of actual manufacturing loss, which has occurred in the manufacturing process adopted by the petitioner. However, this Court is also of the view that there is no necessity to quash the circular dated 20.10.2011 and it would be sufficient to direct the Assessing Officer to inspect the manufacturing process adopted by the petitioner.

8. Accordingly, the writ petitions are disposed of by directing the first respondent to cause an inspection of the petitioner's factory, after prior notice to the petitioner, when the manufacturing process is on and ascertain the percentage of actual manufacturing loss, which is stated to have occurred in

the course of manufacturing. After ascertaining the percentage, the first respondent is directed to issue a show cause notice to the petitioner, permit them to file objections and after affording an opportunity of personal hearing, pass a speaking order on merits and in accordance with law. Till then no coercive action shall be initiated against the petitioner. No costs. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

To

1.The Assistant Commissioner (CT)(FAC),
Tirupur Rural Circle, Tirupur.

2.The Principal Secretary/
Commissioner of Commercial Taxes,
Ezhilagam, Chennai.

3.The Commercial Tax Officer,
Special Circle-II, Tirupur.

+1cc to Mr.B.Ravendran, Advocate SR.No.34949

WP.Nos.26507 and 26508
of 2013 & MP.No.1 of 2013

GN(13/06/2018)