IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2018

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.28945 and 28946 of 2010
and
M.P.Nos.1 and 1 of 2010

M/s.C.M.Atheequr Rahman & Company
rep.by its Partner C.M.Mubarak Ali
... Petitioner in both WPs

Vs

The Assistant Commissioner (CT)(FAC)
Periamet Assessment Circle,
3, Ritherdon Avenue,
Chennai -7.
... Respondent in both WPs

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN Nos.33850421768/2006-07 and 33850421768/2007-08 dated 22.11.2010 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan both WP
For Respondent : Mr.M.Hariharan, AGP both WP

COMMON ORDER

Challenging the re-assessment orders dated 22.11.2010 passed by the respondent for the years 2006-07 and 2007-08, the petitioner has come up with the present writ petitions.

2.It is the case of the petitioner that they are engaged in the business of Hides and skins. They are the registered dealers under the TNVAT and CST Acts and are the assessee on the file of the respondent. They filed its returns for the assessment years 2006-07 and 2007-08 reporting the total turnovers as Rs.4,16,37,667/- and Rs.11,34,08,797/- and taxable turnovers as Rs.nil and Rs.7,87,88,922/- respectively, which were accepted by the respondent vide assessment orders dated 18.02.2010 and 12.10.2010. Subsequently, the respondent issued notices dated 31.03.2010 and 20.10.2010 stating that the Enforcement Wing officers have conducted an audit on 27.10.2009 and found that the petitioner had not reported the freight/transport charges and has availed the Input Tax Credit (ITC) wrongly on the sales made to 100% E.O.U amounting to Rs.4,01,940/- and Rs.12,38,070/- and hence, proposed to revise the assessment by levying tax on the freight/transport charges and also reverse the ITC of Rs.4,01,940/- and Rs.12,38,070/- respectively. On receipt of the same, the petitioner sent its reply in detail on 14.05.2010 and 15.11.2010. Without considering the same in proper perspective, the respondent confirmed the proposal by the impugned orders dated 22.11.2010. Aggrieved over the same, the petitioners have filed the present writ petitions.

3.The learned counsel for the petitioner submitted that the petitioner had not availed any ITC on the closing stock held on 31.12.2006, out of which, they have effected 100% E.O.U sales during 01.01.2007 to 31.03.2007 and 01.04.2007 to 31.03.2008, however, they have not effected any 100% E.O.U sales from and out of the purchases effected from 01.01.2007 to 31.03.2008. Therefore, the reversal of ITC made by the respondent is arbitrary, illegal and unjust. The learned counsel further submitted that as per Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006, the reversal of ITC can be made only if ITC has been wrongly availed. In the present case, the petitioner had not availed ITC, which fact has also been admitted by the respondent, in his own assessment orders and hence, the question of reversal of the same does not arise. Thus, according to the learned counsel, the orders impugned herein are liable to be set aside.

4.On the other hand, the learned Additional Government Pleader appearing for the respondent fairly submitted that the Assessing Officer, while passing the assessment orders under Section 22(2), has to consider the relevant provision of Section 27(2) of the TNVAT Act, with regard to reversal of ITC, whereas, in the instant case, without taking into account the fact that the petitioner has not availed ITC, the respondent has passed the reassessment orders, which are impugned herein.

5.Heard both sides and perused the records.

6.At the outset, it is pertinent to refer to Section 27(2) of the TNVAT Act, which is extracted hereunder:

> "Where, for any reason, the input tax credit has been availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the assessing authority shall, at any time, within a period of five years from the date of

order of assessment, reverse input tax credit availed and determined the tax due after making such a enquiry, as it may consider necessary."

7.It is the specific case of the petitioner that they have not availed any ITC, which has been conceded by the respondent, in the orders impugned herein. However, the respondent failed to consider the same and reversed the ITC for the period in question.

8.Such being the case, this Court is of the opinion, when the aforesaid provision makes it clear, that when the ITC has been availed wrongly, the assessing authority shall reverse the same and determine the tax, but the approach so adopted by the respondent vitiates the reassessment orders as bad and contrary to law. Hence, the orders impugned herein are liable to be set aside.

9.Accordingly, the writ petitions are allowed by setting aside the orders dated 22.11.2010 passed by the respondent, for the assessment years in question. The matter is remanded back to the respondent for fresh consideration. The petitioner is permitted to produce all the documents, in addition to the documents already submitted along with the reply, to the respondent within a period of two weeks from the date of receipt of a copy of this order. On such production, the respondent shall consider the same along with the original assessment orders submitted by the petitioner and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner, within a period of six weeks thereafter. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII )

//True copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)(FAC)
Periamet Assessment Circle,
3, Ritherdon Avenue,
Chennai -7.

+1cc to Mr.S.Ramanathan, Advocate SR.No.45013
+1cc to Spl Government Pleader SR.No.45847

W.P.Nos.28945 and 28946 of 2010

GSP(11/10/2018)