In the High Court of Judicature at Madras

Dated : 04.07.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.8105 to 8108 of 2016

&

W.P.No.5527 of 2016

Tvl.SCM Garments Pvt Limited
Represented by its Director
Thiru.T.Loganathan
No.57, VOC Nagar (South)
Valayankadu
Tiruppur District ... Petitioner in all W.Ps

Vs.

1.The Commercial Tax Officer
Special Circle-I
CT Main Building Kumaran Road
Tiruppur - 641 601

2.The Joint Commissioner (CT)
Commercial Taxes Building First Floor
Dr.Balasundaram Road
Coimbatore- 641 018

3.The Assistant Commissioner (Ct)
R.S.Puram (East Circle)
Coimbatore

4.The Deputy Commissioner (CT)
CT Main Building, Kumaran Road
Tiruppur - 641 601 ...Respondents in all WPs

Prayer in W.P.No.8105 of 2016: Writ petition filed under Article 226 of The Constitution of India praying for the issuance of Writs of Mandamus for a direction to the first respondent to issue refund of Rs.5,17,491/- which has been denied in the order of the First Respondent TIN 33502307107/2014-15 (188467) dated 16.11.2015 passed in relation to the petitioner's application in Form W claiming refund under Section 18(2) of the Tamil Nadu Value Added Tax Act, 2006 for the month of February, 2015 with interest for the period of denial of that refund.

Prayer in W.P.No.8106 of 2016: Writ petition filed under Article 226 of The Constitution of India praying for the issuance of Writs of Mandamus for a direction to the first respondent to issue refund of Rs.3,47,841/- which has been denied in the order of the First Respondent TIN 33502307107/2014-15 (188468) dated 16.11.2015 passed in relation to the petitioner's application in Form W claiming refund under Section 18(2) of the Tamil Nadu Value Added Tax Act, 2006 for the month of March, 2015 with interest for the period of denial of that refund.

Prayer in W.P.No.8107 of 2016: Writ petition filed under Article 226 of The Constitution of India praying for the issuance of Writs of Mandamus for a direction to the first respondent to issue refund of Rs.5,97,917/- which has been denied in the order of the First Respondent TIN 33502307107/2015-16 (188575) dated 30.11.2015 passed in relation to the petitioner's application in Form W claiming refund under Section 18(2) of the Tamil Nadu Value Added Tax Act, 2006 for the month of June, 2015 with interest for the period of denial of that refund.

Prayer in W.P.No.8108 of 2016: Writ petition filed under Article 226 of The Constitution of India praying for the issuance of Writs of Mandamus for a direction to the first respondent to issue refund of Rs.3,42,726/- which has been denied in the order of the First Respondent TIN 33502307107/2015-16 (188596) dated 30.11.2015 passed in relation to the petitioner's application in Form W claiming refund under Section 18(2) of the Tamil Nadu Value Added Tax Act, 2006 for the month of July, 2015 with interest for the period of denial of that refund.

Prayer in W.P.No.5527 of 2016: Writ petition filed under Article 226 of The Constitution of India praying for the issuance of Writs of Mandamus for a direction to the first respondent to issue refund of Rs.40,56,533/- which has been denied in the order of the First Respondent TIN 33502307107/2015-16 dated 04.11.2015 passed in relation to the petitioner's application in Form W claiming refund under Section 18(2) of the Tamil Nadu Value Added Tax Act, 2006 for the month of December 2014 with interest for the period of denial of that refund.

For Petitioners : Mr.Adithya Reddy

For Respondents : Mr.M.Hariharan
Additional Government Pleader

ORDER

Heard, Mr.Adithya Reddy, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing for the respondents.

2. The prayers sought in all these writ petitions are identical and filed by a manufacturer in garments, who is registered a dealer under the provisions of the Tamil Nadu Value

Added Act, 2006 on the file of the third respondent. Though the petitioner has filed these writ petitions praying for issuance of a writ of mandamus directing the first respondent to refund varied sums of money for the relevant Assessment years, it has been denied by the first respondent vide order dated 16.11.2015. Though, technically the petitioner should have filed a writ of certiorari to quash the said order, this Court is of the view that the petitioner need not be non-suited on such technical ground, since the impugned order is a consequence upon an application filed by the petitioner for grant of refund. The petitioner is aggrieved by the restriction of Input Tax Credit to an extent of 50% on dyes and chemicals purchased by them for the use in the process of dying of hosiery garments.

3. In the order dated 16.11.2015, I find that there is no plausible reason given by the respondent for restricting the Input Tax Credit to 50%, but there is a reference to a proceedings of the Joint Commissioner dated 13.11.2015. The petitioner did not have any opportunity to question the correctness of such a decision nor they were put on notice about the directive issued by the Joint Commissioner. In any event, unless and until there is a decision of an Authority of advance ruling, the same cannot bind the Assessing Officer. Apart from that, in the parawise instruction given to the learned Special Government Pleader, vide communication dated 04.03.2016, it has been candidly admitted by the respondent that instead of demanding payment for the alleged erroneous refund, the first respondent has deducted from the claim made by the petitioner. Thus, the parawise instruction given by the Officer clearly shows that action has been initiated without providing an opportunity to the petitioner. Therefore, the entire decision making process culminating in the order dated 16.11.2016 is vitiated on several grounds including the ground of violation of principles of natural justice. Hence, for the above reasons, this Court is inclined to mould the relief that can be granted to the petitioner in this writ petitions.

Accordingly, these writ petitions are allowed and the order passed by the first respondent dated 16.11.2016 is set aside and the matter is remanded to the first respondent for fresh consideration after affording an opportunity of personal hearing to the petitioner. No costs.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

To

1.The Commercial Tax Officer
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4.The Deputy Commissioner (CT)
CT Main Building, Kumaran Road
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+1 CC to Mr. Adithya Reddy, Advocate sr 43272.
+1 CC to The Spl. Govt. Pleader sr 43705.

Writ Petition Nos.8105 to 8108 of 2016 &
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RK(CO)
SP(20/07/2018)