IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.33926 of 2018
and
W.M.P.Nos.39387 & 39389 of 2018

M/s. Virgo Polymers (India) Limitd
represented by Mr.Vivek Ramsisaria,
Managing Director,
A-1-A, MMDA Industrial Complex,
Maraimalai Nagar,
Kancheepuram - 603 209. ... Petitioner

vs.

The Assistant commissioner (ST) (FAC),
Chengalpattu Assessment Circle,
16-A, 1st Floor, I Main Road,
Anna Nagar,
Chengalpattu - 603 001. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the files of the respondent in CST.632297/2014-15 dated 29.10.2018 and quash the same as being violative of principles of natural justice and hence invalid and illegal.

For Petitioner : Mr.V.Srikanth
For Respondent : Mr.V.Hari Babu,
Addl.Govt.Pleader(Tax)

O R D E R

The petitioner is aggrieved against the order of assessment dated 29.10.2018 passed in respect of the assessment year 2014-15.

2. Mr.V.Haribabu, learned Additional Government Pleader (Tax) takes notice or the respondent. By consent of the parties, the main writ petition is taken up for final disposal.

3. The grievance of the petitioner before this Court is that the Assessing Officer, while passing the impugned order of assessment had traveled beyond the scope of the show cause notice and reversed the ITC under four heads viz., (i) CST Sales without 'C' and 'H' form, (ii) CST Sales with 'C' form, (iii) ITC Reversal for Stock Transfer and iv) ITC Reversal for Inter-state SEZ sales.

4. Learned counsel appearing for the petitioner invited this Court's attention to the notice of proposal dated 18.07.2018 and pointed out that the said notice proposed to assess the petitioner's total taxable turn over for arriving at the tax liability alone without there being any proposal for reversal of ITC as has been done in the order of assessment. Therefore, he submitted that the reversal of ITC by the Assessing Officer is in violation of principles of natural justice.

5. Learned Government Pleader appearing for the respondent fairly submitted that the notice of proposal issued to the petitioner does not contain the proposal of reversal of ITC. Therefore, he submitted that the matter may be remitted back to the Assessing Officer to redo the assessment once again from the stage of issuance of notice of proposal.

6. Perusal of the notice of proposal dated 18.07.2018 would show that such proposal was confined only for determining total and taxable turn over without there being any indication about the proposal to revenue ITC under the above said four heads. While that being the factual position, the Assessing Officer has in fact, apart from determining the tax liability, has also reversed the ITC under the aforesaid four heads without there being any notice of proposal to that effect. Therefore, as rightly pointed out on behalf of the petitioner, the reversal of ITC was without notice and consequently, in violation of principles of natural justice. Therefore, this Court is inclined to set aside the impugned order of assessment and remit the matter back to the Assessing Officer for redoing the same from the stage of issuance of fresh notice of proposal.

7. Accordingly, the Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment in respect of the subject matter assessment year 2014-15 from the stage of issuance of notice of proposal. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

vsi

To

The Assistant commissioner (ST) (FAC),
Chengalpattu Assessment Circle,
16-A, 1st Floor, I Main Road,
Anna Nagar,
Chengalpattu - 603 001.

+1 CC to Mr.V.Srikanth, Advocate sr 88311.
+1 CC to Spl. Govt. Pleader sr 89096.

W.P.No.33926 of 2018

SSI(CO)
SP(24/01/2019)