IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.20808 of 2012

M/s.Danavarshini Exports Private Limited,
rep by Director,
3, Kula Thottam,
Kangayam Road,
Tirupur - 641 604. ... Petitioner

vs

The Assistant Commissioner (CT),
Central - I Assessment Circle,
Tirupur. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in TIN No.33802404524/2011-12, quash the order dated 25.06.2012 passed therein in so far as it denies the refund of Input Tax Credit of Rs.4,46,480/- and further direct the respondent to refund the same to the petitioner herein.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.V.Haribabu
Additional Government Pleader

O R D E R

The writ petitioner is aggrieved by the impugned order dated 25.06.2012 bearing reference No.TIN:33802404524/2011-12 passed by the respondent Assistant Commissioner (CT), sanctioning a sum of Rs.7,95,243/- as the Net ITC refundable under Section 18 of the TNVAT Act, 2006 read with Rule 11 of the TNVAT Rules, 2007 after making the following deductions:-

Refund claimed by the dealer in Form W	---	Rs.12,41,723 /-
Less:ITC reversal on account of non-filing of return By the suppliers found through return audit module	Rs.15,888/-	
Less:Revenue mismatch	---	
Less:Purchase from unregistered dealer	---	
Less:Purchases from SB dealer	---	
Less:5% reversal for yarn wastage (invisible loss)	Rs.42,018/-	
Less:1% visible loss	Rs.29,912/-	
Less:ITC for capital Goods	Rs.3,58,662 /-	
Total	Rs.4,46,480 /-	
Net ITC Refundable		Rs.7,95,243/ -

2.It is the contention of the petitioner that the respondent was not justified for deducting the amount from the writ petitioner for a sum of Rs.12,41,723/- claimed by the petitioner in Form W. He further submits that the amount that has been sanctioned by the impugned order has also not been refunded till the date and therefore, the impugned order is liable to be set aside.

3.Per contra, the learned Additional Government Pleader for the respondent revenue submits that while sanctioning the refund under Section 18 of the TNVAT Act, 2006 read with Rule 11 of the TNVAT Rules, 2007 there was no necessity for granting personal hearing to the claimant/writ petitioner. He further submits that Rule 11 does not contemplate that while sanctioning the concerned refund claim as to give the hold a personal hearing.

4.Heard the learned counsel for the petitioner and the respondent. I have considered the impugned order passed by the respondent Assistant Commissioner (CT).

5.Though Rule 11 of the TNVAT Rules, 2007 does not specifically contemplate personal hearing, before rejecting the claim whether in part or in full, principle of natural justice has to be complied as such order adversely affects a claimant. Therefore, even if Rule 11 of the TNVAT Rules, 2007 does not contemplate the express of personal hearing, the principle of natural justice has to be read into it.

6.In this case, the order has rejected refund claim to an extent of Rs.4,46,480/- [Rs.12,41,723 - Rs.7,95,243]. Therefore, the impugned order passed by the respondent Assistant Commissioner (CT) is liable to be set aside the extent as it denies refund of Input Tax Credit of Rs.4,46,480/- to the petitioner. The case is therefore remitted back to the respondent to re-look the claim to that extent.

7.In the impugned order, an amount of Rs.7,95,243/- has already been sanctioned to the petitioner. The respondent is therefore directed to refund the aforesaid sum of Rs.7,95,243/- within a period of two weeks from the date of a receipt of a copy of this order, if it has not already been refunded to the petitioner.

8.The respondent Assistant Commissioner of Tax (CT) shall pass appropriate orders within a period of three months from the date of receipt of a copy of this order, in accordance with law, in so far as the balance amount of Rs.4,46,480/-. Needless to state, before passing orders the petitioner shall be heard.

9.The present Writ Petition is disposed in terms of the above observations. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
The Assistant Commissioner (CT),
Central - I Assessment Circle,
Tirupur.

+1cc to Mr.B.Raveendran, Advocate SR.101818
+1cc to the Special Government, Pleader(Taxes) SR.102256

W.P.No.20808 of 2012

MR(CO)
CB(10/02/2020)