IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.12.2019
CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 20820 of 2012
and
M.P. No. 1 of 2012

Sri Palani Andavar Cotton Corporation,
Represented by its Proprietor,
No.183, Cotton Market, Kamaraj Road,
Tirupur - 4. ... Petitioner

Vs

The Commercial Tax Officer,
Bazaar Circle, Tirupur. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent in his proceedings in TIN No.33292421634/2006-2007, quash the assessment order dated 22.05.2012 issued therein and further direct the Respondent not to insist upon payment of purchase tax by the Petitioner under Section 12 of the TNVAT Act, 2006 as a condition precedent for the purpose of claiming the benefit of Input Tax Credit under Section 19 (3) (c) of the TNVAT Act, 2006 for the assessment year 2006-2007.

For Petitioner : Mr. B.Raveendran

For Respondent : Ms. Dhanamadri
Government Advocate (Taxes)

ORDER

This writ petition has been filed by the Petitioner, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the Respondent in his proceedings in TIN No.33292421634/2006-2007, quash the assessment order dated 22.05.2012 issued therein and further direct the Respondent not to insist upon payment of purchase tax by the Petitioner under Section 12 of the Tamil Nadu Value Added Tax Act, 2006 (in short the TNVAT Act) as a condition precedent for the purpose of claiming the benefit of Input Tax Credit under Section 19 (3) (c) of the TNVAT Act, 2006 for the assessment year 2006-2007.

2. The Petitioner's Corporation is a dealer in cotton lint and seed who had purchased cotton kappas from unregistered dealers and agriculturalists. Since such purchase attracts purchase tax under Section 12(1) of the TNVAT Act, 2006, the liability was to be discharged by the Petitioner. The Respondent, therefore, issued a notice to the Petitioner on 12.10.2011 and called upon the Petitioner to pay the same in cash.

3. Since no reply was filed by the Petitioner to the said notice, the impugned order was passed by the Respondent. By the impugned order, the Petitioner has been held liable to pay tax under section 12 (1) of the TNVAT Act, 2006.

4. It is the contention of the Petitioner that whatever tax that is to be paid under section 12(1) of the TNVAT Act, 2006, is available by way of Input Tax Credit under section 12(2) of the TNVAT Act, 2006 and since the Petitioner has paid at the time of sale there is no loss to the revenue.

5. Per contra, the learned counsel for the Respondent submits that the Petitioner has an alternate remedy. It is further submitted that, in any event the Petitioner failed to participate in the adjudicatory mechanism provided under the Act by filing a reply and or participating in the adjudicatory mechanism provided under the TNVAT Act, 2006.

6. It is further submitted that purchase tax has to be paid first in cash and thereafter credit can be availed of such tax for discharging output tax liability at the time of sale and therefore it is not open for the Petitioner to plead revenue neutrality. It is submitted that when the law prescribes the particular methods, it is not open to the Petitioner to deviate from the same.

7. I have considered the arguments of the learned counsel for the Petitioner and the Respondent. There is no merits in the present writ petition. Under section 12 (1) of the TNVAT Act, 2006 the Petitioner is duty bound to pay tax if the circumstances specified therein are attracted. Such tax has be paid only in cash. After such payment of tax in cash, the Petitioner can avail credit of such tax under section 12(2) of the TNVAT Act, 2006 for discharging the tax at the time of sale.

8. Therefore, I do not find any merits the submission of the learned counsel for the Petitioner. The present writ petition is therefore liable to be dismissed and is accordingly dismissed with liberty to the Petitioner to file an appeal against the impugned order within a period of 30 days from the date of receipt of a copy of this order.

9. In case such an appeal is filed before the Additional Deputy Commissioner, the Additional Deputy Commissioner is directed to dispose the appeal on merits without insisting on limitation. It is Needless to state that the Petitioner shall be heard and the Petitioner shall also be required to deposit the amounts as prescribed under the TNVAT Act.

10. This Writ Petition stands disposed with the above observation. Consequently connected miscellaneous petition is also closed. No cost.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

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To

1. The Commercial Tax Officer,
Bazaar Circle, Tiruppur.

2. The Additional Deputy Commissioner,
Tiruppur.

+1cc to Government Pleader(Taxes), SR.No.106737.

W.P. No. 20820 of 2012
and
M.P. No. 1 of 2012

VD(CO)
CSR: 19.02.2020