IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 30.09.2020
PRONOUNCED ON : 16.10.2020

CORAM:
THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.13208 to 13211 of 2015
and M.P.Nos.1, 1, 1 & 1 of 2015

M/s.Sidhara Export,
rep. by its Managing Partner,
R.Ravichandran,
D.No.20/15-A, Eswaramurthy Gr.,
Layout 3rd Street,
Karuvampalayam,
Tirupur-641 604. ... Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (CT),
Tirupur (South) Assessment Circle,
Tirupur. ... Respondent in all W.Ps.

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the files of the respondent in TIN 33442323630/2006-07, 2007-08, 2008-09 & 2009-10 dated 24.03.2015 respectively and to quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner :Mr.R.Senniappan
For Respondent :Mr.ANR.Jayaprathap, SGP (T)

C O M M O N O R D E R

With the consent of both parties, the present Writ Petitions are taken up and heard through Video Conferencing on 30.09.2020.

2. The short ground on which the present Writ Petitions deserves to be allowed are that the reason for confirmation of the proposal in the impugned orders dated 24.03.2015 is entirely different from the reason proposed in the earlier show cause notices dated 30.01.2014.

3. In connection with the Assessment Years 2006-07 to 2009-10, notices dated 28.07.2014 were issued pointing out the defects of visible loss that had occurred in manufacturing of hosiery garments and liability under Section 12 of the Tamil Nadu Value Added Tax Act, 2006 on the payment made for printing and embroidery charges to unregistered dealers, thereby

proposing to reverse the ITC for the relevant assessment years. However, after considering the objections of the petitioner, the impugned orders, have been passed for violation of Section 13(5) of the TNVAT Act, which were not proposed in the earlier notices dated 28.07.2014 for the AYs 2006-07 to 2009-10.

4. It is a settled proposition of law, that whenever a levy or reversal of ITC is ought to be made, the same should be preceded by a proposal in order to extend an opportunity to the dealers to put forth their objections. In the present case, such an opportunity itself has been denied since there was no proposal for the purpose spelt out in the impugned orders and the proposal in the earlier show cause notice is totally different from the impugned demands. Accordingly, the petitioner would be entitled to succeed.

5. For all the foregoing reasons, the impugned orders dated 24.03.2015 shall stand quashed. However, if the respondent is of the view that they are entitled for claim of reversal of ITC for the AYs 2006-07 to 2009-10, it will be open to them to send appropriate proposals calling for the petitioner's objections and thereafter take further course of proceedings, after giving due opportunity of personal hearing to the petitioner. The Writ Petitions stands thus allowed. Consequently connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

DP
To

The Assistant Commissioner (CT),
Tirupur (South) Assessment Circle,
Tirupur.

+1 CC to Mr.R.Senniappan, Advocate sr 34595
+1 CC to The Special Government Pleader (T) sr 34736.

W.P.No.13208 to 13211 of 2015
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GJ(CO)
SP(09/12/2020)