IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.06.2020

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN
Writ Petition Nos.14826 & 14827 of 2012
& M.P.Nos.1 & 1 of 2012

Tvl. Tarun Creation,
Represented by Smt. R.Suneetha, Proprietrix,
No.51 Sherief Colony Main Road,
Tirupur 641 604 ... Petitioner in both W.Ps

..vs..

The Commercial Tax Officer,
Bazaar Circle, Tirupur ... Respondent in both W.Ps

Prayer in both Writ Petitions:- Writ Petitions 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 herein in TIN No.33402423271/2006-07 and 2007-08, respectively, dated 16.05.2012 and to quash the same.

For Petitioner in both W.Ps. : Mr. R.Senniappan
For Respondents in both W.Ps. : Ms. Dhanamadhri, AGP (Taxes)

C O M M O N O R D E R

Today, these matters are taken up by this Court through Video Conferencing, CISCO Webex Meeting, on account of COVID-19.

2.The petitioner has filed these Writ Petitions, challenging the orders dated 16.05.2012 passed by the respondent, for the assessment years 2006-07 and 2007-08. By the impugned orders, the request of the petitioner to drop the proposal levying tax at 4% on the invisible loss at 5% of yarn purchase and on the sales of cutting waste and rejected export garments at 0.5%, was rejected.

3.Upon notice, the respondent filed a detailed common counter affidavit inter alia stating that the place of business of the petitioner was visited by the Enforcement Wing Officers on 19.05.2011 and 20.05.2011 and after verification of their records, it was found that they have obtained excess refund due to certain defects; based on the sworn statement and the report of the Enforcement Wing Officers, notices dated 29.11.2011 were issued, to which, the petitioner filed their objections on 29.12.2011; being dissatisfied with the objections so filed, the respondent passed the assessment orders dated 16.05.2012, which are in consonance with the relevant provisions of the Act and hence, the writ petitions are liable to be dismissed.

4.The learned counsel for the petitioner, during the course of hearing, submitted that the issue involved herein is covered by the decision of this Court in Interfit Techno Products Ltd. v Principal Secretary/ Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another [(2015) 81 VST 389 (Madras)], wherein, it is held as follows:

> “62. In the light of the above conclusion, the decision relied on by the learned counsel for the petitioner in the case of Binani Industries Limited Vs. Assistant Commissioner of Commercial Taxes VI Circle, Bangalore and Others [2007] 6 VST 783 (SC) with regard to reopening of the assessment does not render assistance to the case of the petitioners. Accordingly Question No.6 is answered against the petitioners.
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> 63. In the result,
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> (1) the challenge to the impugned circular is held to be unnecessary since the circular is a non statutory circular and is in the nature of guideline and the prayer for quashing the circular is rejected.
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> (2) Section 18 of the TNVAT Act is not an independent or a separate stand alone provision under the provisions of TNVAT Act but subject to other provisions of the Act including Section 19 of the VAT Act.
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> (3) For the reasons assigned, it is not sufficient for a dealer claiming refund under Section 18(2) of the Act to show that he has paid input tax on the goods purchased; that those goods are used in the manufacture and nothing more but there is duty upon the dealer to satisfy the Assessing Authority that the claim is not hit by any of the restrictions or conditions contained under Section 19 of the VAT Act. In this regard, it is essential for the Assessing Authority to embark upon the fact finding exercise to ascertain the quantum of loss of the goods which were purchased on which tax was paid vis-a-vis the goods manufactured from and out of the goods purchased and to examine as to whether they fall within any of the restrictions contained in Section 19 of the VAT Act. The Assessing Officer has to conduct an exercise by which it is to be ascertained as to whether the representation made by the dealer is justified and is not hit by any any of the restrictions and conditions contained in Section 19 and in particular Section 19(9) of the VAT Act.
>
> (4) It is held that the Assessing

> Authorities are not justified in adopting uniform percentage as invisible loss and calling upon the dealer to reverse the input tax credit availed to that extent. Consequently, all notices issued to the petitioner for reopening and all consequential order passed reversing the input tax credit to the extent of either 4% or 5% or on adhoc per centage stands set aside. However, liberty is granted to the concerned Assessing Officer to issue appropriate show cause notices to the petitioners clearly setting out under what circumstances they propose to revise or call upon the petitioner to reverse refund sanctioned and after inviting objections proceed in accordance with law.
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> (5) The undertaking given by the dealer in Form W is with regard to information furnished for the purpose of verification by the Assessing Officer under Rule 11(2) of the VAT Rules for being entitled to refund under Section 18(2). Therefore, it is not as if the Act does not provide a remedy in the event of a wrong or erroneous refund sanctioned when Section 18 cannot be treated as an independent provision but subject to restrictions and conditions under Section 19 of the VAT Act.
>
> 64. The Writ petitions are disposed of accordingly. No costs. Connected MPs are closed."

Hence, the learned counsel prayed for a similar order in these writ petitions as well.

5.The learned Additional Government Pleader (Taxes) appearing for the respondent has fairly conceded the submission so made by the learned counsel for the petitioner and she has no serious objection for granting such relief to the petitioner.

6.Considering the facts and circumstances of the case and having regard to the aforesaid submissions made by the learned counsel on either side and also following the decision cited supra, which holds good to the facts of the present case, the impugned orders dated 16.05.2012 passed by the respondent stand set aside. Since the assessment orders are relating to the years 2006-07 and 2007-08, the respondent / Assessing Officer shall decide the issue afresh, after issuing show cause notices to the petitioner clearly setting out the circumstances under which they propose to revise or call upon the petitioner to reverse refund sanctioned and after receiving their objections. Such notices be issued by the respondent within a period of four weeks from the date of receipt of a copy of this order. On receipt of such notices, the petitioner shall submit their objections along with the required documents, if any, within a period of two weeks thereafter. On such submission, the respondent shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, within a period of four weeks therefrom.

7.Both these writ petitions are allowed to the extent as indicated above. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

srk
To
1. The Commercial Tax Officer,
Bazaar Circle, Tirupur.

W.P.Nos.14826 & 14827 of 2012
& M.P.Nos.1 & 1 of 2012

A.SK(20/07/2020)