IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.27498 of 2014

M/s.Om Textiles,
Rep. by its Partner
V.Sasivarnan ... Petitioner

Vs.

1.The Principal Secretary/Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Assistant Commissioner (CT)
Rural Circle,
Tirupur. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the files of the 1st respondent in VAT Cell/Roc.No.37188/2011/ Circular No.22/2011 dated 20.10.2011 quash the same as illegal and arbitrary.

For Petitioner : Mr.D.Muthuselvam
For Respondents: Mr.A.N.R.Prathap
Government Advocate (Taxes)

O R D E R

Challenging Circular No.22/2011, dated 20.10.2011, issued by the first respondent, the petitioner has come up with this writ petition.

2.Today, when the matter was taken up for consideration, the learned Government Advocate (Taxes) appearing for the respondents submitted that the Circular in dispute has already been challenged and it was negatived by this Court in the case of Interfit Techno Products Limited Vs. Principal Secretary/ Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another ([2015] 81 VST 389 (Mad)), relevant portion of which reads as follows:

> "In the result,
>
> (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.

(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.

(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.
>
> (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."

3.The learned counsel appearing for the petitioner submitted that the order of assessment has already been challenged by a separate writ petition.

4.Following the aforesaid order, this writ petition is dismissed, leaving it open to the petitioner to agitate the issue in the writ petition questioning the order of assessment. No costs. Consequently, connected miscellaneous petitions, if any, are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Secretary/Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Assistant Commissioner (CT)
Rural Circle, Tirupur.

+1cc to Mr.D.Muthuselvan, Advocate, S.R.No. 21631
+1cc to the Special Government Pleader(Taxes), S.R.No. 22201

W.P.No.27498 of 2014

SVI(CO)
GN(15/07/2020)