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.27660 of 2014
&
MP.No.2 of 2014

Tvl.Victus Dyeings
Represented by its Partner,
L.Mohan Shankar ... Petitioner

Vs.

1.The Assistant Commissioner (CT)(FAC),
Rural Assessment Circle,
Tirupur.

2.The Commercial Tax Officer,
Special Circle – I and II,
Tirupur.

3.The Principal Secretary/ Commissioner of
Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai – 600 005. ... 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 third respondent herein in VAT Cell/Roc.No.37188/2011 (Circular No.22/2011) dated 20.10.2011 and to quash the same in so far as the petitioner herein is concerned.

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

O R D E R

This writ petition has been filed seeking issuance of Writ of Certiorari calling for the records on the files of the third respondent in VAT Cell/Roc.No.37188/2011 (Circular No.22/2011) dated 20.10.2011 and to quash the same in so far as the petitioner is concerned.

2.The Circular in dispute namely, Circular No.22/2011, dated 20.10.2011 has already been challenged before this Court and such challenge 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.In such view of the matter, this writ petition is dismissed following the order stated supra. No costs. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-
Assistant Registrar

true Copy
Sub-Assistant Registrar

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To

1.The Assistant Commissioner (CT)(FAC),
Rural Assessment Circle,
Tirupur.

2.The Commercial Tax Officer,
Special Circle – I and II,
Tirupur.

3.The Principal Secretary/ Commissioner of
Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai – 600 005.

+1 cc to Mr.R.Senniappan Advocate sr22215
+1 cc to Special Government Pleader(Taxes)22203

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aa14/07/2020