IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2020

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Writ Petition No.28878 of 2014
&
M.P.No.1 of 2014

M/s. The Icewear Creation, Rep. by its Partner,
V.Chandrasamy, No.37 T.S.K.Nagar, 3rd Street,
KNP Colony Post, Dharapuram Road,
Tirupur. ... Petitioner

..vs..

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

2. The Commercial Tax Officer, Special Circle II, Tiruppur.

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

Prayer :- Writ Petition 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 file of the second respondent in TIN 33642386473/ 2011-12, dated 25.10.2013 and quash the same as illegal and arbitrary.

For Petitioner : Mr. D.Muthuselvam

For Respondents: Mr. J.Ramesh, AGP., for R-1,
Ms. Dhanamadhri, AGP, for R-2 & R-3.

O R D E R

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

2.The petitioner has filed this Writ Petition, challenging the order dated 25.10.2013 passed by the second respondent. By the impugned order, it was informed to the petitioner that the Enforcement Wing Officers notified certain defects and estimated visible loss, invisible loss, reversal of ITC for exempted sales during the years from 2007-2008 to 2011-2012 and hence, the balance amount of input tax paid for refund, after reversing and deducting ineligible ITC, is Rs.1,94,329/-.

3.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.
>
> (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.

64. The Writ petitions are disposed of accordingly. No costs. Connected MPs are closed.”

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

4.The learned Additional Government Pleader (Taxes) appearing for the respondents 2 and 3 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.

5.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 order dated 25.10.2013 passed by the second respondent stands set aside. Since the refund order is relating to the assessment year 2011-12, the second respondent shall decide the issue afresh, after issuing show cause notice 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 objection. Such notice be issued by the second respondent within a period of four weeks from the date of receipt of a copy of this order. On receipt of such notice, the petitioner shall submit their objections along with the required documents, if any, within a period of two weeks thereafter. On such submission, the second respondent shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner, within a period of four weeks therefrom.

6.This writ petition is allowed to the extent as indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

srk

To

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

2. The Commercial Tax Officer,
   Special Circle II, Tiruppur

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

W.P.No.28878 of 2014

VG II(CO)
GN(31/07/2020)