IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2021

CORAM

THE HON'BLE MR. JUSTICE C.SARAVANAN

W.P.No. 15946 of 2012
and
M.P.No. 1 of 2012

M/s.Sara Leathers,
Represented by its Proprietrix Ms.Saraswathi,
No.86, Bajanai Koil Street,
Pammal, Chennai - 600 075. ... Petitioner

Vs

The Commercial Tax Officer,
(Export Refund Claim)
Tambaram I Assessment Circle,
No.19-A, Sivshanmugam Road,
West Tambaram, Chennai - 600 045. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in TIN.No.33349088281З/2010-2011, quash the impugned proceedings dated 19.03.2012 and further direct the respondent to grant refund of the "input tax credit" claimed by the petitioner in form W, (excluding machinery spares and stationaries) as claimed by the petitioner.

For Petitioner : MrV.Sundareswaran
For Respondent : Ms.G.Dhanamadhri
Government Advocate

ORDER

Since the issue lies on a short compass, it is taken up for hearing and disposed even though no counter has been filed based on the submissions of the learned counsel for the petitioner and the respondents.

2. The petitioner has challenged the impugned order seeking to deny refund of a sum of Rs.38,962/- under Section 18(2) of the Tamil Nadu Value Added Tax Act, 2006.(hereinafter referred to as the TNVAT Act, 2006). As per the impugned order the reasons were that some of the goods(similarly stated that the goods) mentioned in the table are ineligible without giving any

explanation as to how they become ineligibe for refund under Section 18(2) of the TNVAT Act, 2006.

3. Section 18(2) of the TNVAT Act, 2006 states that the dealer should claim refund of Input Tax paid or payable by him on purchase of those goods, which are exported as such or consumed or used in the manufacture of other goods that are exported as specified in sub-section (1), subject to such restriction and conditions as may be prescribed. As per sub section (1) of Section 18 Zero Rates Sales shall be eligible for Input Tax Credit or refund of the amount tax paid on purchase of goods specified in the 1st schedule including capital goods, by a registered dealer in the State, subject to such restrictions and conditions as may be prescribed.

4. From the Annexure in the impugned order containing the table described/giving reasons for denial of refund, it is noticed that statitionery items, shoe last, heater, clicking knives, oil etc has been denied merely withut explanation as to how they became ineligible. Section 18(2) of the TNVAT Act, 2006 makes it clear that not only goods which are exported as such or consumed or used in the manufacture of other goods that are exported are eligbile for refund or Input Tax paid by the assessee. There is a factual material which is required to be examined by the authority and it is not sufficient to simply state that no refund claim will be entertained.

5. The leaned counsel for the petitoner also mentioned that a decision relating to liability on Input Tax Credit was subject matter of an order of this Court, on an earlier occasion in W.P. Nos. 10736 to 10739, 17313 to 17316 & 20185 of 2009 in petitioner's own case in Sara Leathers Vs Commercial Tax Officer, Chennai, (2010) 30 VST 581 (Mad). This Court in Para (10) dismissed the writ petitions in W.P. Nos. 10736 to 10739 of 2009 regarding the admissibility of the Input Tax Credit on paper board while permitting the petitioner to file revision under the provisions of the Act within a period of 4 weeks.

6. The learned counsel for the petitioner submits that pursuant to the revision orders passed, input credits were allowed. It is therefore submits that liability may be given to the petitioner to produce that order also before the respondents to substantiate the right to claim refund under Section 18(2) of the TNVAT Act, 2006.

7. I find that the suggestion of the petitioner is reasonable and accordingly the impugned order seeking to denial of the Input Tax Credit on the items mentioned in the impugned order is set aside and the case stands remitted back to the respondent to pass a speaking order within a period of 4 weeks

from the date of receipt of a copy of this order.

8. The petitioner is directed to file appropriate submission and appear before the respondents for a personal hearing within such period. The respondents shall consider the case in the light of the above observations contained herein and pass appropriate orders on merits.

9. This Writ Petition stands allowed by way of remand. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb

To
The Commercial Tax Officer,
(Export Refund Claim)
Tambaram I Assessment Circle,
No.19-A, Sivshanmugam Road,
West Tambaram, Chennai - 600 045.

+1 cc to The Special Government Pleader,Sr.No. 3804
+1 cc to M/s. V.Sundareswaran, Advocate Sr.No. 3993

W.P.No. 15946 of 2012
and
M.P.No. 1 of 2012

PA(CO)
RMP(03/03/2021)

21.01.2021