BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.792 of 2021

M/s.Atlas Export Enterprises,
“Atlas Chambers”,
29-J Pugalur Road,
Karur - 639 001. ... Petitioner

Vs.

The Assistant Commissioner,
Karur East Circle,
Karur. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records of the order of the respondent dated 06.11.2020 in TIN: 33643660956/2010-11 to 2016-17 and quash the same further direct the respondent to comply with the directions of the High Court of Madras in judgment in Interfit Techno Products Ltd., Vs. The Principal Secretary, Commissioner of Commercial Taxes reported in (2015) 81 VST (Mad) before passing fresh orders on the petitioner's representation under Section 85 of TNVAT Act, 2006.

For Petitioner : Mr.Athithya Reddy.J

For Respondent : Mr.G.Arjunan,
Government Advocate.

ORDER

Heard the learned counsel on either side.

2.The petitioner is an exporter. The petitioner has been registered under the Tamil Nadu Value Added Tax Act with the respondent. The petitioner is entitled to refund of input tax credit for the exports effected by him. The petitioner's specific case is that while applying the invisible loss ratio under Section 19(9)(iii) of the Tamil Nadu Value Added Tax, the respondent applied an arbitrary formula of 5%. The specific case of the petitioner is that it has been held by the Madras High Court in the decision reported in ***(2015) 81 VST 389 (Interfit Techno Products Ltd., Vs. The Principal Secretary, Commissioner of Commercial Taxes)*** that this invisible loss ratio will have to be worked out after inspecting the manufacturing process in question and that it is not open to the assessing officer to make an adhoc assessment or adopt uniform percentage stating that same is to be treated as invisible loss. It has specifically mandated that there must be examination of the manufacturing process to find out as to what is actual manufacturing loss or production loss or invisible loss.

3.The petitioner's counsel would pointedly contend that without honouring this specific mandate and without inspecting the petitioner's manufacturing process, the respondent chose to compute the invisible loss ratio at 5%. Therefore, the petitioner wanted this Court to direct respondent to make corresponding refund.

4.The petitioner had filed a rectification petition under Section 84 of the Tamil Nadu Value Added Tax. Since the same was rejected by the impugned order dated 06.11.2020, the present writ petition has been filed.

5.The respondent has filed a counter affidavit and the assessing officer appeared before this Court through video conferencing and took me through its contents. The learned Government Advocate also reiterated the contents set out in the counter affidavit and called upon this Court to dismiss the writ petition as devoid of merits.

6.I carefully considered the rival contentions and went through the materials on record.

7.The case of the respondent is that the refunds were promptly effected to the petitioner. But then, the Commissioner of Commercial Taxes, issued a proceeding reminding the assessing authority that they have failed to reverse the input tax credit in respect of the invisible loss ratio and that therefore, they must re-work the assessment. Pursuant to the aforesaid direction, the respondent herein issued show cause notice to the petitioner herein. In response to the show cause notice given by the respondent, the petitioner had submitted letters on 17.08.2017 working out the invisible loss at 5%. The assessing authority accepted the quantum of loss arrived at by the petitioner and passed orders as per the petitioner's request. It is specifically stated in the counter affidavit that at the time of passing orders, the assessing officer neither increased nor decreased the quantum of invisible loss reported by the petitioner. This counter affidavit was served on the petitioner on 17.02.2021 and this assertion has not been rebutted by filing a rejoinder. Nevertheless, the petitioner's counsel pointed out that only a false assertion has been made in the counter affidavit and it is not supported by any material. Therefore, this Court called upon the assessing officer to make available the copy of the letters given by the petitioner herein. In response to the aforesaid direction, the assessing officer immediately made available a copy of the petitioner's letters in which the petitioner himself has accepted the invisible loss ratio in his case at 5%. Of course, the petitioner's counsel would still insist that when a specific mandate has been issued by this Court that the assessing authority should examine the manufacturing process before arriving at invisible loss ratio and that the said mandate cannot be given go by by receiving a waiver letter from the petitioner. I am not in a position to accept this contention. It is always open to an assessee to waive a benefit granted to him under law. It is not as if some fundamental right is involved. Only if a constitutionally guaranteed fundamental right is at stake, the same cannot be waived. The case on hand is not one such. Therefore, the respondent cannot be faulted for having acted on the petitioner's letters. In any event, there is no waiver of any right as such. The issue is regarding the working out of the exact ratio of invisible loss. The petitioner himself has come forward and given in writing that the invisible loss is at 5%. Therefore, the order passed by the respondent accepting the same cannot be said to suffer from any error apparent on the face of the record. We are now concerned with exercise of the jurisdiction under Section 84 of the Tamil Nadu Value Added Tax Act. Only if there is error apparent on the face of the record, the authority will have the jurisdiction to even intervene. Such is not the case here. I find no ground to interfere. The writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Assistant Commissioner,
Karur East Circle,
Karur.

+1 CC to M/s.J.ATHITHYO REDDY, Advocate (SR-10729[F] dated 12/03/2021)

+1 CC to M/s.SPL GP (SR-10919[F] dated 12/03/2021)

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