IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2023

CORAM :

The HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.20338 of 2020
and
W.M.P.Nos.25137 & 25138 of 2020

M/s.CBC Fashions (Asia) Private Limited,
Rep. By its Managing Director – T.R.Vijayakumar,
No.11, CBC Building,
M.R.Nagar,
K.N.P.Colony Post,
Dharapuram Road,
Tirupur – 641 608.
Tirupur District. .. Petitioner

vs

The Assistant Commissioner(ST) (FAC),
Bazaar Circle,
Tirupur,
Tirupur District. .. Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records on the file of the respondent in his impugned proceedings made in TIN.3349242404/2017-18 dated 19.08.2020 quash the same as illegal and contrary to law.

For Petitioner	:	Mr.S.Rajasekar
For Respondent	:	Mrs.Vasanthamala Government Advocate (Tax)

ORDER

The petitioner is on a second round of litigation. It was a dealer under the erstwhile regime of Tamil Nadu Value Added Tax Act, 2006 (TNVAT) and continued under the Goods and Services Tax Act, 2017 regime on and with effect from 01.07.2017.

2. The petitioner approached the respondent on 29.01.2019 seeking refund of excess Input Tax Credit as on 30.06.2017 for an amount of Rs.1,21,45,904/-. Some records were produced before the Officer to establish their claim. There was exchange of notices and responses thereafter and an order of assessment came to be passed on 23.07.2019.

3. The claim of the petitioner was accepted to an extent of Rs.1,06,38,712/- and an amount of Rs.7,03,243/- was not accepted. To be noted, that claim related to unsold taxable goods as on 30.06.2017 as per the submission of the petitioner.

4. The petitioner challenged that assessment by way of writ petition in W.P.No.24606 of 2019, that came to be disposed on 22.08.2019 remanding the matter to the assessing authority for fresh consideration. Thereafter, the petitioner filed written

objections, was heard and suffered an order on 19.08.2020 reiterating its ineligibility to refund.

5. One of the grounds on which the claim of the petitioner has been rejected is that the petitioner has failed to transition credit under Section 140(1) of the Goods and Services Tax Act, 2017. This ground cannot be countenanced as there is an option available to an assessee statutorily, to either transition credit under Section 140(1) or to seek refund under Section 142(3).

6. In fact, this position has been accepted even by the assessing officer since a substantial part of the refund, amounting to Rs.1.06 crores (approx), has been granted under order of assessment dated 23.07.2019. Thus, the fact that the assessee has not transitioned the credit cannot be held against it and this ground is held in favour of the petitioner.

7. There are, in addition, other objections raised by the Officer, both in terms of Section 19(2) of TNVAT as well on the ground that the petitioner is not entitled to ITC as Zero Rated Sales. These questions would have to be decided after taking note of the factual matrices of the matter, including the nature of transactions

entered into by the petitioner and thus would not be appropriate for consideration in this writ petition.

8. This writ petition has been instituted on 21.12.2020 beyond the statutory period for limitation. However, learned Government Advocate does not seriously object to the petitioner being permitted to file an appeal before the appellate authority and thus, the petitioner is permitted to do so within a period of two weeks from today. Appeal, if filed within the period as aforesaid, shall not be treated as one barred by limitation. The Officer shall, however, ensure compliance with all other statutory requirements, including the pre-deposit.

9. Writ petition is disposed with liberty as above. No costs. Connected miscellaneous petitions are closed. Registry to return the original order.

29.03.2023

Index:Yes
Neutral Citation:Yes
ssm

To
The Assistant Commissioner(ST) (FAC),
Bazaar Circle,
Tirupur,
Tirupur District.

DR. ANITA SUMANTH,J.

ssm

W.P.No.20338 of 2020

29.03.2023