

In the High Court of Judicature at Madras

Dated : 28.8.2014

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

Writ Petition No.23417 of 2014 and MP.No.1 of 2014

M/s.Farida Leatherware Private Limited,
rep.by its Corporate Manager, Accounts
& Finance Mr.S.Sridhar ...Petitioner
Vs
The Assistant Commissioner (CT)
Ambur Assessment Circle, Ambur
Vellore District. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records comprised in the impugned order in TNGST No.4262179/2004-2005 dated 18.7.2014 on the file of the respondent and quash the same.

For Petitioner : Mr.Mohammed Shaffiq
For Respondent : Mr.Cibi Vishnu, AGP

ORDER

The petitioner has come up with the above writ petition challenging a revised order of assessment under Section 16 of the Tamilnadu General Sales Tax Act, for the assessment year 2004-2005.

2. Heard Mr.Mohammed Shaffiq, learned counsel for the petitioner. Mr.Cibi Vishnu, learned Additional Government Pleader takes notice for the respondent.

3. The petitioner claims to be a 100% export oriented unit and they have an exemption granted under the Foreign Trade Policy. They were assessed for a total and taxable turnover for the year 2004-2005 under the Act 1959.

4. After a scrutiny of the assessment records, the respondent was of the view that the petitioner had sold material/did job work for another 100% export oriented unit. Therefore, a revised notice was issued and after considering the objections of the petitioner, the impugned order was passed. Challenging the said order, the petitioner is before this Court.

5. There can be no dispute about the fact that this Court can entertain a writ petition against a revised assessment order even without the petitioner availing the alternative remedy of appeal available under the Act, provided the case falls within the exceptions such as lack of jurisdiction on the part of the respondent or on the violation of principles of natural justice.

6. According to the learned counsel for the petitioner, the impugned order suffers from both vices namely lack of jurisdiction and violation of principles of natural justice.

7. On the first violation, the contention of the learned counsel for the petitioner is that the exemption granted under the Foreign Trade Policy is now sought to be whittled down by the respondent on the ground that a sale to another 100% export oriented unit is not covered by the exemption. Relying upon the decision of the Supreme Court in **State of M.P. Vs. G.S. Dall and Flour Mills [1992 Supp. (1) SCC 150]**, the learned counsel contends that the provision of an earlier scheme cannot be read into the Notification and an interpretation contrary to the original purpose, cannot be made by a different authority.

8. But unfortunately, the respondent has not completely annulled the effect of the exemption that the petitioner enjoys under the Foreign Trade Policy. The petitioner made the very same objection in response to the proposal. The petitioner relied upon the Customs Circular bearing No.54/2004 dated 13.10.2004. The respondent pointed out that the policy came into effect only from 1.9.2004. In other words, the respondent simply read the exemption notification/circular and found out to which extent it will be applicable. He has not taken a stand contrary to the Foreign Trade Policy.

9. The second objection of the petitioner is that in the original proposal made on 10.3.2010, the respondent alleged that the petitioner had not exported their products as per the terms and conditions of the Import Export Policy. After the petitioner produced the Customs Circular dated 13.10.2004, the respondent took a view that the policy came into effect only from 1.9.2004. Therefore, the contention of the learned counsel for the petitioner is that such an interpretation to the circular dated 13.10.2004 was not indicated in the proposal. Hence, the same amounts to a violation of reasonable opportunity of being heard.

10. But, I am least impressed with the said contention. The proposal simply states that the petitioner made sales to another unit in violation of Import Export Policy. The petitioner relied upon a circular. Just for reading the circular and pointing out to the petitioner that the circular would apply only from a particular date, the respondent need not again put the petitioner on notice. Whatever the petitioner relied upon, was pointed out by the respondent to be applicable only from a particular date. Therefore, I do not know as to how natural justice is violated in this case. In view of the above the proper course of action open to the petitioner is only to go before the Appellate Authority.

11. Accordingly, the writ petition is dismissed. The petitioner is at liberty to file an appeal before the Appellate Authority. But, since the period of time for filing the appeal would have now expired, I grant time upto 15.9.2014 to the petitioner to file an appeal. Till then, the respondent shall not enforce the demand. No costs. Consequently, the above MP is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1 The Assistant Commissioner (CT),
Ambur Assessment Circle, Ambur,
Vellore District.

2 The Section Officer
ER Section, High Court, Madras-104

+1 CC to Mr.Mohammed Shaffiq, Advocate SR.No. 40169

+1 CC to Special Government Pleader, High Court, Madras. sr.no.40413

UG (CO)
ns (8.9.14)

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