IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.28275 of 2016

Tvl.Mahaajay Spinners India Pvt. Ltd.,
Represented by its Managing Director,
Ba.Mahendhiran,
No.86, Advaitha Ashram Road,
Salem-636 004. .. Petitioner

Versus

The Commercial Tax Officer,
Arisipalayam Assessment Circle,
Salem. .. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records on the files of the respondent in TIN.33132843575/2013-14, dated 31.03.2016 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.R.Senniappan, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent.

2. The petitioner-Company, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred as "TNVAT Act"), has filed this Writ Petition, challenging the order of assessment dated 31.03.2016 for the year 2013-14.

3. The impugned order dated 31.03.2016 is an order rejecting the petitioner's claim for refund of the Input-Tax Credit on the ground that Form W has been filed by the petitioner belatedly. In the written instructions given by the respondent to the learned Government Advocate, vide letter dated 16.08.2016, the same issue is reiterated and it is submitted that as per the Circular, dated 20.11.2011, the application claiming Export Refund should be filed only in

Form-W electronically, but the petitioner has filed the claim for refund manually, after the lapse of 180 days.

4. Though the Circular has been issued to the above said effect, there is no specific statutory provision brought to the notice of this Court to show that the manual forms cannot be accepted.

5. The issue as to whether the delay in filing the Forms could be a ground to deny refund, came up for consideration before this Court in a case of R.K.Knits V. Assistant Commissioner (CT) (MAD) reported in [2015] 84 VST 521 (Mad), wherein, the Court pointed out that admittedly, the dealers turnover relate to an export turnover attracting zero rate and there was no taxable sales effected locally or inter-state and Section 18 of the TNVAT Act would be applicable for zero rated sale and the dealers therein had admittedly been making a claim in terms of Rule 10(10) of the TNVAT Act, in its monthly returns and there was no denial of the fact that the claim has been made within the time specified under the Act. Therefore, the Court held that when the Form I Return remains undisputed, there is no justification on the part of the Assistant Commissioner to reject the refund claim on the ground that Form W has been filed beyond 180 days. Further, it was pointed out that the provision of Input Tax Credit being a beneficial provisions and the Act contemplates filing of monthly returns, the claim could be made therein by giving necessary details along with the Input Tax Credit refund claim and the proper course for the Assistant Commissioner would be to take up the Assessment expeditiously to consider the claim and pass order. The said decision was subsequently followed by this Court in the case of FIRST GARMENT MFG. Co. (INDIA) v. ASST. COMMR. (MAD) reported in [2016] 88 VST 154 (Mad).

6. In the instant case also, it is not in dispute that the petitioner's turnover relates to export turnover and which is a zero rated sale and the petitioner has also filed Form I returns on monthly basis. Therefore, the mere delay in submission of Form W or submission in the manual Form alone cannot be a ground to refuse to look into the petitioner's application for refund.

7. In the light of the above, the Writ Petition is allowed and the impugned order is set-aside and the matter is remanded to the respondent and the respondent is directed to verify Form W as regards the admissibility and genuinity and if found satisfied shall pass appropriate orders. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To
The Commercial Tax Officer,
Arisipalayam Assessment Circle,
Salem.

+1 cc to Mr.R.Senniappan,advocate,sr.49084

+1 cc to Spl.Govt.Pleader,sr.49117.

sr(co)
krd 9/9

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