IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.6942 to 6944 of 2017 of 2017
&
W.M.P.Nos.7531 to 7536 of 2017

Tvl. Guru Ragavendra Textiles,
Represented by its Proprietor,
P.Velliangiri .. Petitioner in all W.Ps'

Vs.

The Assistant Commissioner(CT),
Omalur Assessment Circle,
Omalur, Salem District. .. Respondent in' all W.Ps'

Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records on the file of the respondent in TIN.Nos.33293241090/2014-15, 33293241090/2015-16 and 33293241090/2016-17 respectively dated 28.02.2017 and quash the same as being without jurisdiction and authority of law and contrary to the principle laid down by this Court in the judgment reported in W.P.No.28275 of 2016 dated 30.08.2016 (Tvl,Mahaajay Spinners India Pvt. Ltd., Vs. Commercial Tax Officr, Arisipalayam Assessment Circle, Salem).

For Petitioner : Mr.R.Senniappan
For Respondents : Mr.S.Kanmani Annamalai, AGP(T)
(In all W.Ps')

COMMON ORDER

By consent of the parties, the main writ petitions itself are taken up for final disposal.

2. The petitioner is aggrieved against the impugned proceedings dated 28.02.2017, wherein, the request of the petitioner for refund was rejected, even though, such request

was made by the petitioner on 30.12.2016 and 30.01.2017 respectively. The issue, as to whether belated filing of the Form-W, would be a bar for considering the request of the petitioner has already been considered and decided by this court by holding such delay, cannot stand in the way of considering the request for refund, in the order dated 30.08.2016, passed by this court in WP.No.28275 of 2016, wherein, the learned Judge has observed in paragraph Nos.5 to 7 as follows:

> ''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 Vs. 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 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 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) Vs. Assistant Commissioner(MAD) reported in (2016) 88 VST 154 (Mad).
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> 6.In the instant case also, it is not in dispute that the petitioner's turn over 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.''

3. Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent fairly submitted that the issue involved in these cases is covered by the above said order and therefore, the claim of the petitioner would be considered, in the light of the above said order passed already on the very same issue.

4.Considering the above said facts and circumstances and considering the very fact that the issue involved in this case has already been decided in favour of the petitioner, I am of the view that the reason set out in the impugned notice cannot be sustained and on the other hand the respondent shall have to consider the request of the petitioner for refund without reference to the belated filing of Form W.

5.Accordingly, the writ petitions are allowed. The impugned orders are set aside. Consequently, the respondent is directed to consider the request of the petitioner for refund and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner(CT),
Omalur Assessment Circle,
Omalur, Salem District.

+1cc to Mr.R. Senniappan, Advocate Sr. 17885
+1cc to the Special Government Pleader Sr. 18343

W.P.Nos.6942 to 6944 of 2017

KJ(CO)
vr(24/03/2017)