IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.11.2017
CORAM
The Hon'ble Mr.Justice T.S.Sivagnanam
W.P.Nos.14471, 14403, 12426, 12427
&
12282 to 12284 of 2009
and
M.P.Nos.1 of 2009 (3 in nos.)

W.P.Nos.14471 of 2009

M/s. Arrow Exports,
rep. by its Partner, R. Sridhar
.. Petitioner

Versus

The Assistant Commissioner (CT),
Tiruppur (North) Circle,
Tiruppur. .. Respondent

Prayer:
Writ Petition, filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records from the file of the respondent, in his proceedings, in TIN No.33812306888/814/09/A5, dated 09.03.2009, and to quash the same as illegal, and further, to direct the respondent to refund the taxes paid on the export sale effected by the petitioner.

WP.No.14403 of 2009

M/S.SHREE KOVERTHANAMBIKAI
TEXTILE REP. BY ITS PARTNER A.GOVINDARAJ
NO.37 THIRUVALLUVAR NAGAR WEAVERS COLONY
P.N.ROAD TIRUPUR-641602. ...Petitioner

Vs

THE ASSISTANT COMMISSIONER(CT)
(FAC) LAKSHMI NAGAR CIRCLE TIRUPUR. ...Respondent

Prayer:-Writ petition, filed under Article 226 of the Constitution of India, seeking for a writ of mandamus, to call for the records from the file of the Respondent in his proceedings in TIN No.33982501328 dated 3.6.2009 quash the same as illegal and contrary to Article 286 (1) (b) of the Constitution of India and further direct the Respondent herein to refund the taxes paid on the export sale effected by the petitioner.

WP.No.12426 & 12427 of 2009

M/S. SUMMER INDIA TEXTILE
MILLS (P) LTD REP BY ITS MANAGING DIRECTOR
A.R. AASAITHAMBHEE ...Petitioner in Both

Vs

THE COMMERCIAL TAX OFFICER
TIRUCHENGODE TOWN TIRUCHENGODE
ERODE DISTRICT. ...Respondent in both

Prayer:-Writ petition, filed under Article 226 of the Constitution of India, seeking for a writ of Mandamus, to call for the records from the file of the respondent in TIN No. 33663182153/2007-08 dt 28.1.2009 pertaining to October 2007 quash the same as illegal and contrary to Article 286 (1) (b) of the Constitution of India and further direct the respondent to refund the taxes paid on exports to the tune of Rs.5,01,146/- and Rs.4,66,760/- respectively.

WP.No.12282 to 12284 of 2009:

M/S. SUMMER INDIA TEXTILE
MILLS (P) LTD REP BY ITS MANAGING DIRECTOR
A.R. AASAITHAMBHEE P.B. NO.12 176/2-A
KOZHIKKALNATHAM ROAD, TIRUCHENGODE,
ERODE DISTRICT. Petitioner in all

Vs

THE COMMERCIAL TAX OFFICER
TIRUCHENGODE TOWN TIRUCHENGODE. Respondent in all

Prayer:-Writ petition filed under Article 226 of the constitution of India, seeking for a writ of mandamus, to callfor the records from the file of the respondent in TIN No. 33663182153/2007-08 dt 28.1.2009 pertaining to June 2007 quash the same as illegal and contrary to Article 286 (1)(b) of the Constitution of India and further direct the respondent to refund the taxes paid on exports to the tune of Rs.7,17,395/-, Rs.7,49,155/- and Rs.6,39,458/- respectively.

For Petitioner : Mr. S. Rajasekar
For Respondent : Mr. K. Venkatesh
Government Advocate

COMMON O R D E R

Heard Mr. S. Rajasekar, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate appearing for the respondent. Since the issue involved in these Writ Petitions are identical in nature, all these Writ Petitions were taken up together and disposed of by this common order.

2. For the sake of brevity and conciseness, the facts are taken from W.P.No.14471 of 2009.

3. This Writ Petition has been filed, challenging notices issued by the respondent/Assessing Officer, dated 09.03.2009, by which, the petitioner's Application filed in Form-W, claiming refund of Input Tax Credit (ITC) for the export sales effected during different spells have been returned, as they have been filed beyond the time prescribed under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as TNVAT Act) and Rules framed thereunder. Section 18 (3) of the TNVAT Act states that, where, the dealer has not adjusted the ITC, or has made a claim for refund within a period of 180 days, shall lapse to the Government. Rule 11 of the TNVAT Rules, provides for refund, and the manner and the form, in which, the refund has to be made.

4. The question would be, as to whether the respondent was justified in simply returning the Form-W, for the reasons assigned in the impugned notice. This very issue was considered by the learned Single Judge of this Court, in R.K.Knits vs. Assistant Commissioner (CT), Adyar II Assessment Circle, Chennai and Ors. reported in [(2015) 84 VST 521 (Madras)].

5. In the above cited case, the petitioner has purchased raw materials locally from registered dealers and used the same for the manufacture of cotton knitted fabrics, which were exported to Foreign Countries. The petitioner reported the said turnover as 'Zero Rated Sales', and since the ITC determined by the Assessing Officer exceeded the tax liability for that year, the petitioner claimed that, they are entitled for refund, and accordingly, filed Form-W. This was returned, as being filed beyond the time prescribed under the TNVAT Act. When this order was put to challenge, the Court held that, admittedly, the dealer's turnover relates to an export turnover, attracting zero rate and there were no other taxable sales effected locally or inter- state. Section 18 is the applicable provision for zero rated sales. Admittedly, the dealer had been making a claim in terms of rule 10 (10) in his monthly returns and there was no denial of the fact that the claim had been made within the time specified under

the Act. In the face of the admitted fact as to the filing of Form I remaining undisputed, there was no justification in the contention of the Assistant Commissioner that Form W filed beyond 180 days resulted in the rejection of the refund claim. The provisions on input tax credit being beneficial provisions and since the provisions of the Act contemplate filing of monthly returns and that a claim could be made therein too by giving necessary details along with the input tax credit refund claim, the proper course for the Assistant Commissioner would be to take up the assessment expeditiously to consider the claim and pass orders accordingly.

6. The above decision would apply with full force to the cases on hand.

7. The learned Government Advocate for the respondents does not dispute the above legal position. Therefore, the respondents have to consider the matter in terms of the decision rendered by this Court, in R.K.Knits (referred to supra).

8. For all the above reasons, these Writ Petitions are disposed of, by directing the petitioners to re-present the Form-W along with the copy of the decision rendered in R.K.Knits (referred to supra), and on receipt of the application/Form-W, the respondent shall afford an opportunity of hearing to the petitioners/Authorized Representative of the petitioners and pass orders on merits and in accordance with law on the Form -W filed by the petitioners.

9. Since it is brought to the notice of this Court that, in some of the Writ Petitions, in this batch, the Assessing Officer has stated one more reason for returning the Forms, stating that the documents required to accompany Form W have not been annexed, the petitioners in those cases are at liberty to annex all the relevant documents while re-submitting Form -W.

10. The direction issued hereinabove shall be complied with by the respondents within a period of three months from the date on which, Form-W are re-presented by the petitioners to the respondents.

9. In the result, all these Writ Petitions have been disposed of, on the terms, as indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Commissioner (CT),
Tiruppur (North) Circle,Tiruppur.

2.The Commercial Tax Officer,
Tiruchengode Town,
Tiruchengode, Erode District.

+1cc to Government Pleader SR.No.79697, 79698
+1cc to M/s.R.Hemalatha, Advocate SR.No.79863
+1cc to M/s.R.Hemalatha, Advocate SR.No.79862
+1cc to M/s.R.Hemalatha, Advocate SR.No.79860

RR(CO)
sm:9.2.2018

W.P.Nos.14471, 14403, 12426, 12427
&
12282 to 12284 of 2009
(7 cases)