IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.04.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.1295 of 2018

Beekay Fabricators,
rep. by its Proprietrix
R. Sujatha ...Petitioner

Vs.

The Assistant Commissioner (CT)
Peelamedu (North) Assessment Circle,
Coimbatore. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondent to grant refund of a sum of Rs.47,42,490/- relating to the assessment years 2010-11 to 2015-16 disclosed in the monthly returns and claimed as provided under Section 19 (18) of the Act.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mrs.G.Dhanamadhri
Government Advocate

O R D E R

Heard Mr.N.Inbarajan, the learned counsel appearing for the petitioner and Mrs.G.Dhanamadhri, the learned Government Advocate, appearing on behalf of the respondent.

2. The petitioner seeks for issuance of a Writ of Mandamus, to direct the respondent to grant refund of a sum of Rs.47,42,490/- relating to the assessment years 2010-11 to 2015-16, as disclosed in the monthly returns and as provided under Section 19 (18) of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act, for brevity)

3. The learned counsel appearing for the petitioner submitted that, the petitioner is eligible and entitled to the refund of excess Input Tax Credit (ITC) as provided under the TNVAT Act and Rule 10 (10) of the TNVAT Rules, 2007. It is further submitted that, so long as, there is a claim of refund

of the excess ITC being carried forward disclosed in the return filed in Form I under TNVAT Act, 2006 is not rejected, the respondent has no jurisdiction to retain the excess ITC. It is further submitted that, so long as the claim of refund of ITC in terms of Rule 10 (10) of TNVAT Rules, in the monthly returns were made in the Form I return filed, there is an eligibility for refund of the excess ITC, as provided under Section 19 (18) of the TNVAT Act.

4. When the Writ Petition was entertained on 22.01.2018, since no interim orders were passed on the petitioner's request for refund of ITC, and notice being issued, the respondent has filed a counter affidavit, inter alia, contending that, when the request for refund was being under consideration, the Writ Petition has been filed. In para No.10 of the counter affidavit, the respondent has taken a stand that the amount, claimed by the petitioner is not due for refund, but, it will lapse to the Government. In this regard, the respondent has issued a show cause notice, dated 05.02.2018, proposing recovery of ITC of Rs.52,48,629/- from the dealer (petitioner) and the show cause notice was received by the petitioner on 09.02.2018.

5. In the light of the above factual position, the petitioner has to necessarily submit their reply/objections to the show cause notice and contest the matter before the respondent, as there is no order passed by the respondent, rejecting the claim of refund made by the petitioner.

6. Accordingly, the Writ Petition is disposed of, by directing the petitioner to submit their reply to the show cause notice, dated 05.02.2018, within 15 days from the date of receipt of a copy of this order, and on receipt of the reply, the respondent shall afford an opportunity of personal hearing to the Authorized Representative of the petitioner and pass a speaking order on merits and in accordance with law. It is needless to state that the petitioner is entitled to raise all the factual and legal contention in the reply that is to be submitted. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sd

To

The Assistant Commissioner (CT)
Peelamedu (North) Assessment Circle,
Coimbatore.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.26917
+1cc to the Special Government Pleader, S.R.No.27354

Writ Petition No.1295 of 2018

NA(CO)
CS/07/06/18