BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD).No.2330 of 2018

and

W.M.P(MD) No.2530 of 2018

Sri.Venkkatachalpathy
Spinning Mills Pvt., Ltd.,
Rep., by its Managing Director,
T.V.Kaushik Rajha,
454, Kothankulam Village, Srivilliputhur Road,
Rajapalayam 626 117, Viruthunagar District ... Petitioner

Vs.

1) The State of Tamil Nadu,
Rep., by its Secretary,
Government Department
of Commercial Taxes,
Fort St.George, Beach Road,
Chennai 600 009

2) The Commissioner of Commercial Taxes,
2nd Floor, Elilagam, Chepauk,
Chennai 600 005

3) The Assistant Commissioner (C.T)-1,
Rajapalayam, Viruthunagar District. ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the notice issued by the third respondent in TIN 336860408289/2013-14 dated 05.01.2018 received by the petitioner on 23.01.2018 and quash the same and to direct the third respondent to consider the Form W submitted to the third respondent on 26.12.2017 along with the connected documents and pass orders.

For Petitioner : Mr.M.MD.Ibrahim Ali

For Respondents : Mr.D.Muruganandham,
Addl., Government Pleader.

O R D E R

This writ petition has been filed by the petitioner for a Certiorarified Mandamus, to call for the records relating to the notice issued by the third respondent and quash the same and to direct the third respondent to consider the Form W submitted to the third respondent on 26.12.2017.

2. The petitioner is aggrieved against the impugned proceedings dated 05.01.2018, wherein, the request of the petitioner for refund was rejected, even though, such request was made by the petitioner on 28.12.2017. 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).

> 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.D.Muruganandham, learned Additional Government Pleader appearing for the respondents fairly submitted that the issue involved in this case 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 respondents shall have to consider the request of the petitioner for refund without reference to the belated filing of Form W.

5.Accordingly, the writ petition is allowed. The impugned order is set aside. Consequently, the respondents are 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 W.M.P(MD) No.2530 of 2018 is closed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

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To
1) The Secretary,
Government Department
of Commercial Taxes,
Fort St.George, Beach Road,
Chennai 600 009

2) The Commissioner of Commercial Taxes,
 2^{nd} Floor, Elilagam, Chepauk,
 Chennai 600 005

3) The Assistant Commissioner (C.T)-1,
 Rajapalayam,
 Viruthunagar District.

+1cc to Mr.M.Mohamed Ibrahim Ali, Advocate in SR No.80062
+1cc to spl Government Pleader SR No.79831

W.P(MD).No.2330 of 2018

NM/SV/SAR 4/26.09.2018/4P/6C