BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.11.2019
CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

Writ Petition (MD).No.2111 of 2012
and
M.P(MD).No.1 of 2012

Tvl.Annarathna Match Industries,
rep., by its Proprietor
Thiru.S.M.Antony Bharati ... Petitioner

Vs.

1.The State of Tamil Nadu
rep., by its Secretary to Government,
Department of Commercial Taxes,
Fort St.George, Beach Road,
Channi.600 009.

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

3.The Commercial Tax Officer-II,
Ettayapuram Road,
Kovilpatty 628 501.
Tuticorin District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of declaration, to declare the Section 18 (2) of the Tamil Nadu Value Added Tax Act, 2006 and Rule 11(2) of the Tamil Nadu Value Added Tax Rules, 2007 as void ab-initio, illegal and ultravires the Constitution of India in so far as the petitioner is concerned.

For Petitioner : Mr.A.S.Mujibur Rahman
For Respondents : Mr.S.Angappan
Government Advocate

ORDER

(Order of the Court was made by **T.S.SIVAGNANAM,J.**)

Heard Mr.A.S.Mujibur Rahman, learned counsel appearing for the petitioner and Mr.S.Angappan, learned Government Advocate appearing for the respondents.

2.Though the petitioner sought for issuance of a Writ of Declaration to declare the Section 18(2) of the Tamil Nadu Value Added Tax Act, 2006 and Rule 11(2) of the Tamil Nadu Value Added Tax Rules, 2007 as *ultravires* the Constitution of India, the learned counsel for the petitioner submitted that the consequential relief seeks by the petitioner before this Court is to test the correctness of the orders passed by the third respondent dated 06.02.2012.

3.In our considered view, declaratory relief sought for by the petitioner is unnecessary. Considering the facts and circumstances of the case, thus, we are not inclined to grant the relief sought for by the petitioner. However, we have examined the correctness of the order passed by the third respondent, dated 06.02.2012. By the said proceedings, the claim for refund made by the petitioner/dealer in Form-W dated 24.01.2012, had been rejected, as it has been submitted after the expiry of 180 days time period and the authority held that the application is not entertainable as per the provisions of the Tamil Nadu Valued Added Tax Act. An identical issue has come up for consideration before the Principal Bench of this Court in several cases and one such case before this Court is ***R.K.Knits Vs., Assistant Commissioner (CT) (MAD)*** reported in ***(2015)84 VST 521 (Mad),*** wherein it was held that the Assessing Officer should not reject the refund claim on the ground that the Form-W has been filed beyond 108 days, the reason being that the provision of the 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 Input Tax Credit refund claim and proper course for the Assistant Commissioner would be to take up the Assessment expeditiously. This decision was subsequently followed in the case of ***First Garment MFG.Co.(INDIA) Vs. Assistant Commissioner (Mad)*** reported in ***(2016) 88 VST 154 (Mad).*** The aforementioned two decisions were followed in the case of ***Tvl.Mahaajay Spinners India Pvt. Ltd., Vs The Commercial Tax Officer, Arisipalayam Assessment Circle, Salem in W.P.No.28275 of 2016 dated 30.08.2016.***

4.In the light of the above, we are inclined to interfere with the order passed by the Assessing Officer, dated 06.02.2012. In the result, while dismissing the prayer sought for by the petitioner to issue a Writ of Declaration, we moulded the relief by setting aside the order passed by the third respondent/Assessing Officer dated 06.02.2012 and direct the third respondent to accept Form-W, dated 24.01.2012 and consider the petitioner's claim on merits and in accordance with law. The above direction shall be complied with by the third respondent within a period of eight weeks from the date of receipt of a copy of this order.

5.Accordingly, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Secretary to Government,
Department of Commercial Taxes,
Fort St.George, Beach Road,
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2.The Commissioner of Commercial Taxes,
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3.The Commercial Tax Officer-II,
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Tuticorin District.

+1 CC to Mr.A.S.MUJIBUR RAHMAN, Advocate (SR-96768[F] dated 07/11/2019)

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