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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.07.2019
CORAM:
THE HONOURABLE DR.JUSTICE ANITA SUMANTH
W.P(MD)Nos.9674 to 9679 of 2014
and M.P(MD) Nos. 1, 1, 1, 1, 1 and 1 of 2014

In W.P(MD) No.9674 of 2019:
M/s.Sri Laxmi Exports,
Rep. by its Managing Partner
P.K.Selvaraj ... Petitioner in all Writ Petitions

Vs.

The Assistant Commissioner (CT),
Tallakulam Assessment Circle,
Madurai 625 020. ... Respondent in all Writ Petitions

Prayer in WP(MD). 9674/ 2014 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records on the file of the Respondent in its impugned proceedings made in TIN No. 33654853256/2013-14 dated 30.04.2014 pertaining to April 2013, 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. 11,18,528/- by processing the Form W filed by the petitioner dated 28.03.3014.

Prayer in WP(MD). 9675/ 2014 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records on the file of the Respondent in its impugned proceedings made in TIN No. 33654853256/2013-14 dated 30.04.2014 pertaining to May 2013, 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. 24,39,637/- by processing the Form W filed by the petitioner dated 28.03.2014.

Prayer in WP(MD). 9676/ 2014 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records on the file of the Respondent in its impugned proceedings made in TIN No. 33654853256/2013-14 dated 30.04.2014 pertaining to August 2013, 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. 14,84,713/- by processing the Form W filed by the petitioner dated 28.03.2014.

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Prayer in WP(MD). 9677/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records on the file of the Respondent in its impugned proceedings made in TIN No. 33654853256/2013-14 dated 30.04.2014 pertaining to September 2013, 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. 11,66,438/- by processing the Form W filed by the petitioner dated 28.03.2014.

Prayer in WP(MD). 9678/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records on the file of the Respondent in its impugned proceedings made in TIN No. 33654853256/2013-14 dated 30.04.2014 pertaining to April 2013, 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. 26,57,552/- by processing the Form W filed by the petitioner dated 28.03.2014.

Prayer in WP(MD). 9679/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records on the file of the Respondent in its impugned proceedings made in TIN No. 33654853256/2013-14 dated 30.04.2014 pertaining to July 2013, 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. 55,41,193/- by processing the Form W filed by the petitioner dated 28.03.2014.

In all writ petitions:

For Petitioner : Mrs.R.Hemalatha

For Respondent : Mr.R.Murugan
Additional Government Pleader

COMMON ORDER

A common issue arises in these writ petitions. The petitioner is a dealer in granite and purchases commodities from Tamilnadu Minerals Limited (TAMIN). The commodities were sold both domestically as well as by way of export. The petitioner is a regular assessee in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act').

2. The monthly returns filed by the petitioner along with required annexures reveal all details in regard to zero rated sales in terms of Section 18 of the Act. The petitioner claims that it is entitled to refund of Input Tax Credit on the zero

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rated sales as well as in terms of Section 18(3) of the Act.

3. The requirement in terms of Section 18(3) is that an assessee engaged in effecting a zero-rated sale, will file a claim for such refund in prescribed Form-W. A time frame of 180 days is provided from the date of effecting of zero rated sale to seek such credit.

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4. In the petitioners' case, admittedly the petitioner has filed Form-W beyond the statutory period of 180 days. The respondent thus had rejected the refund sought, strictly applying the provisions of Section 18(3) of the Act. According to him, the period of 180 days stated therein is mandatory and since admittedly the aforesaid time frame has not been complied with in seeking refund, the Credit would lapse to the Government.

5. The impugned proceedings dated 30.04.2014 have thus come to be passed rejecting the claim of refund in respect of zero rated transactions from the month of April to September 2013 as against which, the petitioner has come before this Court.

6. In this connection, the petitioner relies on the order of a learned single Judge of this Court in the case of *Sara Leathers Vs. the Commercial Tax Officer, Tambaram I Assessment Circle, Chennai* (2010) 30 VST 581 Mad.).

7. Mr.Murugan, learned Additional Government Pleader has accepted notice on behalf of the respondent. Though no counter has been filed in the matter, he has proceeded to argue the same based on the instructions received from the authority. He has also been supplied with the copy of the decision relied upon by the petitioner. According to him, there is no flaw in the impugned order, insofar as admittedly, the claim for refund has been made beyond the statutorily permitted period of 180 days as per Section 18(3) of the Act.

8. Heard rival contentions advanced by both the learned counsels.

9. The petitioner in this case has admittedly sought refund beyond the period of 180 days provided by the statute. The provisions of Section 18 reads as follows:

> *18. Zero-rating .-. (1) The following shall be zero rate sale for the purpose of this Act, and shall be eligible for input tax credit or refund of the amount of the tax paid on the purchase of goods specified in the First Schedule including capital goods, by a registered dealer in the State, subject to such restrictions and conditions as may be prescribed:- (i) A sale as*

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specified under sub-section (1) or (3) of section 5 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956); (ii) Sale of goods to any registered dealer located in Special Economic Zone in the State,[for the purpose of use in manufacture, trading, production, processing, assembling, packaging or for use as packing material or packing accessories] if such registered dealer has been authorised to establish such units by the authority specified by the Central Government in this behalf; and (iii) Sale of goods to International Organisations listed out in the Fifth Schedule.*

*(2) The dealer, who makes zero rate sale, shall be entitled to refund of input tax paid * Omitted [or Payable] by him on purchase of those goods, which are exported as such or consumed or used in the manufacture of other goods that are exported as specified in sub-section (1), subject to such restrictions and conditions as may be prescribed.*

(3) Where the dealer has not adjusted the input tax credit or has not made a claim for refund within a period of one hundred and eighty days from the date of 1[making zero rate sales] accrual of such input tax credit, such credit shall lapse to Government.

10.In the present case, the learned counsel appearing for the respondent has not raised any dispute on the classification of the transactions in question as zero-rated sales.

11. The only question that arises is whether the prescription of 180 days is to be mandatorily applied or is only directory. The comprehensive monthly returns filed by the petitioner admittedly contain *inter alia*, all particulars in relation to the zero rated transactions. The format of monthly returns in Form-I contains Annexure-4 wherein the petitioner has to set out details of the transaction of zero rated sales. This will be available on monthly basis before the Assessing Authority and as such, the requirement to file Form-W is only for the convenience of the authority to receive the particulars of the claim by way of a consolidated statement. Thus, I am not inclined to accept the submissions of learned Additional Government Pleader to the effect that the period of 180 days is a mandatory period.

12. The decision in the case of *Sara Leathers Vs. the Commercial Tax Officer, Tambaram I Assessment Circle, Chennai* (2010) 30 VST 581 Mad.) supports my conclusion as above. In *Sara Leathers* (supra), the Court considered the disallowance of the claim of the petitioner for refund of tax paid by it at 12.5 % as against 4.5% chargeable notwithstanding there was a dispute raised

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in the assessment thereof. The Court held that such dispute would not stand in the way of the refund sought. In my considered view, the petitioner before me stands in better position, as the classification of the transactions as zero-rated sales in the present case are not in dispute at all.

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13. In the light of the aforesaid discussion, the impugned orders are quashed. The petitioner is permitted to seek refund/adjustment of the amount of credit which shall be considered by the Assessing Authority after hearing it within a period of two weeks from date of receipt of such request in line with the observations as above.

14.These writ petitions are allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

CM

To,
The Assistant Commissioner (CT),
Tallakulam Assessment Circle,
Madurai 625 020.

+1 CC to M/s.R.HEMALATHA, Advocate (SR-77553[F] dated 25/07/2019)

+1 cc to The Special Government Pleader Sr.No.77739

W.P(MD)No.9674 to 9679 of 2014
and M.P(MD) Nos. 1, 1, 1, 1, 1 and 1 of 2014
24.07.2019

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