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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.19318, 19322, 19326, 19328, 19330 & 19331 of 2020
and
WMP. Nos.23914, 23915, 23917, 23920, 23925 & 23926 of 2020

M/s.Beekay Fabricators,
represented by its Proprietrix,
No.2/5-6, V.K.Road,
Coimbatore -35

… Petitioner in the above WPs

Vs

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

… Respondent in the above WPs

COMMON PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records of the respondent in his proceedings in TIN No.33572123981/2014-15, 2015-16, 2013-14, 2012-13, 2010-11 & 2011-12 quash the order dated 12.10.2020.

For Petitioner : Mr.P.V.Sudakar in the above WPs

For Respondent : Mr.TNC.Kaushik,
Government Advocate in the above WPs

C O M M O N   O R D E R

Heard Mr.P.V.Sudakar, learned counsel for the petitioner and Mr.TNC.Kaushik, learned Government Advocate for the respondent.

2. The challenge is to orders of assessment passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the assessment years 2010-11 to 2015-16.

3. Two issues arise, the first one being the rejection of refund for the reason that the Form W has not been filed in electronic form within the stipulated time frame of 180 days. To be noted that the eligibility of the petitioner to zero-rated

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sales is not disputed, since the officer mentions that the monthly return reflects the details of zero-rated sales.

4. In similar circumstances, I have taken a view in the case of M/s.Sri Laxmi Exports vs. The Assistant Commissioner (CT) in W.P. Nos.9674 to 9679 of 2014, drawing support from an earlier decision of this Court in the case of Sara Leathers vs. the Commercial Tax Officer, Tambaram I Assessment Circle, Chennai (30 VST 581) that the period of 180 days mentioned in Section 18 of the Act, is only suggestive and not mandatory. In light of the admitted position that the details of zero-rated sales are clearly on record, the mere fact that the petitioner has not filed Form W electronically within 180 days cannot stand in the way of grant of the relief sought for, the petitioner being entitled to the same, in substantive terms. Hence, this ground is allowed.

5. The second issue is as regards the adjustment of Input Tax Credit (ITC) of a sum of Rs.1,95,748/-. This issue does not emanate from a reading of the pre-assessment proposals and the adjustment has come to be made straightaway in the assessment orders without any notice having been issued to the petitioner in this regard. This is in violation of the principles of natural justice. Though a challenge to the adjustment has been raised in the writ petitions, there is no response to the same in the counters and hence, this ground is also accepted. The impugned orders assessment are thus set aside and these writ petitions allowed. Connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

rkp
To

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

+1cc to Mr.B.Raveendran, Advocate, S.R.No.28837
+1cc to Special Government Pleader(T), S.R.No.28876

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GPL(CO)
SB(19/07/2021)

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