IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.30846, 30847, 30849 and 30850 of 2019

Tvl.Abirami Engineering Company,
rep. By its Partner,
K.L.Narayanan

… Petitioner in the above W.Ps

Vs

The Assistant Commissioner(ST)(FAC),
Perur Assessment circle,
Coimbatore – 641 018.

....Respondent in the above W.Ps

PRAYER : Petitions filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus call for the records of the respondent in TIN No.33851924686/2012-13, 2013-14, 2014-15 and 2015-16 and quash the impugned order dated 26.09.2019 passed therein and further direct the respondent to refund the balance amount of Rs.47,780/-, Rs.2,56,713/-, Rs.2,84,291 and Rs.1,00,896/- together with interest.

For Petitioner : Mrs.Hema Muralikrishnan

For Respondent : Mr.TNC.Kaushik
Government Advocate

C O M M O N O R D E R

Heard Mrs.Hema Muralikrishnan, learned counsel for the petitioner and Mr.TNC.Kaushik, learned Government Advocate for the respondent.

2. The challenge is to four orders of assessment passed in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the periods 2012-13 to 2015-16. The assessments originally made were set aside by an order of this

Court dated 20.03.2017 in W.P.No.1838 of 2017, wherein a learned single Judge of this Court had noticed at paragraph 4 that the issues set out in the notice appear to be covered in favour of the petitioner and therefore the request of the petitioner for refund shall be entertained without reference to belated filing of Form W. In so stating, this Court referred to an earlier decision of this Court dated 30.08.2017 in W.P.No.28275 of 2016 and in conclusion, set aside the impugned order directing the respondent to consider the request of the petitioner for refund and pass appropriate orders within a period of eight (8) weeks from date of receipt of that order.

3. The petitioner, pursuant to that order, was in correspondence with the respondent and pre-assessment notices were issued thereafter by the Assessing Officer culminating in the impugned orders dated 26.09.2019.

4. Two arguments are raised before me challenging the impugned orders. The first one relates to the rejection of the grant of refund. In the case of Sara Leathers V. Commercial Tax Officer (30 VST 581) a learned single Judge of this Court has stated that the request for refund should be considered notwithstanding the belated filing of Form W. In stating so, she has opined that the time frame set out for filing of Form W is not mandatory but is merely directory.

5. I have applied the aforesaid ratio in Sri Laxmi Exports V. Assistant Commissioner (W.P.(MD)Nos.9674 to 9679 of 2014 dated 24.07.2019) and M/s.Beekay Fabricators, V. The Assistant Commissioner (ST), (W.P. Nos.19318, 19322, 19326, 19328, 19330 & 19331 of 2020 dated 21.06.2021).

6. Though the learned counsel for the revenue states that an appeal has been filed in W.A.SR.No.70247 of 2017 as against order dated 20.03.2017 in W.P.No.1838 of 2017, the matter is under SR stage for the last four years and evidently, the revenue is not inclined to pursue the appeal any further. The decision in Sara Leathers (supra) thus holds the field and the rejection of the request for refund on the ground of belated filing of Form W cannot be accepted. To this extent, the impugned orders are set aside. Refund be granted within a period of eight (8) weeks from date of uploading of this order in the official website of this Court.

7. The second issue relates to rejection of the claim of Input Tax Credit (ITC) on the ground of mismatch of particulars between that contained in the petitioner's return and that contained in the selling/purchasing dealers' returns. Though the respondent has put the petitioner to notice of this issue and has also enclosed the details of cross verification

conducted with the Assessing Authorities of the purchasing/selling dealers, the assessee, in response, has requested that this issue be kept in abeyance pending finalization of an intra-departmental mechanism that was proposed to be set out to look into matters of cross verification. This mechanism is yet to be set up.

8. Thus and bearing in mind that the assessment periods involved are 2012-13 to 2015-16, this issue is set aside and remitted to the files of the Assessing Authority. Learned counsel for the petitioner confirms that all materials for cross verification have already been supplied by the Officer and what remains is a personal hearing alone.

9. For this purpose, the petitioner will appear before the Assessing Authority virtually on 20.07.2020 at 10.30 a.m. without expecting any further notice in this regard. After hearing the petitioner, orders of assessment be passed de novo on this point within a period of four (4) weeks from the date of completion of hearing. The time lines stipulated aforesaid should be adhered strictly by both parties.

10. These Writ Petitions are disposed as above. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (ST)(FAC),
Perur Assessment circle,
Coimbatore - 641 018.

+1CC to Government Pleader, Sr.No.31738

W.P. No.30846, 30847, 30849 and 30850 of 2019

PCH (CO)
K.RK. (06.08.2021)