BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.10756 to 10768 of 2017

M/s.Tayub Mohamed Hajee Moosa & Co.,
Rep. by its Partner Hanif A.Tayub,
16, West Chithirai Street,
Madurai. ... Petitioner in all Writ Petitions

Vs.

1. The Additional Commissioner(CT) (Revision Petition),
O/o. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai.

2. The Assistant Commissioner(CT) (FAC),
West Tower Street Assessment Circle,
Madurai. ... Respondents in all Writ Petitions

Prayer W.P.(MD)No.10756 of 2017 :

Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent in records in Revision petition:J1/RP/41/2013 dated 30.06.2015 pertaining to December 2008, 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.23,173/-.

Prayer in WP(MD). 10757 of 2017 :

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 1st respondent in records in Revision Petition: J1/RP/42/2013 dated 30.6.2015 pertaining to July 2009 and September 2009, 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.22,256/-.

Prayer in WP(MD). 10758 of 2017 :

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 1st respondent in records in Revision Petition: J 1/RP/43/2013 dated 30.6.2015 pertaining to August 2009, 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.23,762/- and pass such further or other orders as this Honble Court.

Prayer in WP(MD). 10759 of 2017 :

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 1st respondent in records in Revision Petition: J 1/RP/44/2013 dated 30.6.2015 pertaining to August 2009, 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.22,277/- and pass such further or other orders as this Honble Court.

Prayer in WP(MD). 10760 of 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Certiorarified Mandamus, calling for the records on the file of the 1st respondent in records in Revision Petition: J1/RP/45/2013 dated 30.6.2015 pertaining to August 2009, 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. 25,738/-.

Prayer in WP(MD). 10761 of 2017 :

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 1st respondent in records in Revision Petition: J1/RP/46/2013 dated 30.6.2015 pertaining to June 2009 and July 2009, 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.19,209/-.

Prayer in WP(MD). 10762 of 2017 :

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 1st respondent in records in Revision Petition: J 1/RP/47/2013 dated 30.6.2015 pertaining to September 2009, quash the same as illegal and contrary to Article 286 (1) (b) of the Constitution of India and further direct the Respondents to refund the taxes paid on exports to the tune of Rs.15,973/- .

Prayer in WP(MD). 10763 of 2017 :

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 1st respondent in records in Revision Petition: J 1/RP/48/2013 dated 30.6.2015 pertaining to March 2009, 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.22,464/- .

Prayer in WP(MD). 10764 of 2017 :

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 1st respondent in records in revision petition J1/RP/49/2013 dated 30.06.2015 pertaining to April 2009, 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. 48,928/-.

Prayer in WP(MD). 10765 of 2017 :

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 1st respondent in records in Revision Petition: J1/RP/50/2013 dated 30.6.2015 pertaining to January 2009, 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.5039/- and Rs.21,832/-.

Prayer in WP(MD). 10766 of 2017 :

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 1st respondent in records in Revision Petition: J 1/RP/51/2013 dated 30.6.2015 pertaining to April 2009, quash the same as illegal and contrary to Article 286 (1) (b) of the Constitution of India and further direct the Respondents to refund the taxes paid on exports to the tune of Rs.46,380/- .

Prayer in WP(MD). 10767 of 2017 :

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 1st respondent in records in Revision Petition: J 1/RP/52/2013 dated 30.6.2015 pertaining to July 2009, 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.29,460/- .

<u>Prayer in WP(MD). 10768 of 2017</u> :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Certiorarified Mandamus, calling for the records on the file of the 1st respondent in records in Revision Petition: J1/RP/53/2013 dated 30.6.2015 pertaining to September and October 2009, 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. 62,892/-.

(in all W.Ps.)

For Petitioner : Mr.S.Karunakar
For Respondents : Mr.G.Arjunan,
Government Advocate.

<u>C O M M O N O R D E R</u>

Heard the learned counsel on either side.

2. M/s.Tayub Mahomed Hajee Moosa and Company has filed these writ petitions in respect of the assessment years 2008-09 and 2009-10 in respect of different months. The petitioner is an exporter engaged in zero rated sales. The petitioner ought to have filed the returns in Form-W to claim refund. Unfortunately, the petitioner did not file the said returns within time. When the petitioner applied for refund, the petitioner's request was rejected on the ground that the Form-W was not filed within 180 days from the date of making zero rated sale. Questioning the same, the petitioner moved the revisional authority. The revisional authority also confirmed the orders passed by the original assessment authority. Challenging the same, these writ petitions have been filed.

3. The respondents have filed a detailed counter affidavit.

4. The learned Government Advocate took me through the contents set out therein. He drew my attention to Section 18(3) of the Tamil Nadu Value Added Tax Act, 2006, which states that where the dealer has not adjusted the input tax credit or has not made a claim for refund within a period of 180 days from the date of making zero rated sales accrual of such input tax credit shall lapse to Government.

5. Though the statutory position appears to favour the stand of the respondents, as rightly pointed out by the learned counsel appearing for the petitioner the issue is no longer *res*

integra. He drew my attention to the decisions reported in (2015) 84 VST 521(Mad) *(R.K.KNITS V. ASSISTANT COMMISSIONER (CT) (MAD)* and [2016] 88 VST 154 (Mad) *(FIRST GARMENT MFG. CO.(INDIA) V. ASST. COMMR.(MAD)*. The ratio laid down in the said decisions has been summarised in the order dated 30.08.2016 in W.P.No.28275 of 2016 *(TVL.MAHAAJAY SPINNERS INDIA PVT. LTD., V. THE COMMERCIAL TAX OFFICER, SALEM)*. Paragraph Nos.5 to 7 of the said order reads 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 V. 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 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 sale and the dealers therein had admittedly been making a 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) v. ASST. COMMR. (MAD) reported in [2016] 88 VST 154 (Mad).
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> 6. In the instant case also, it is not in dispute that the petitioner's turnover 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.
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> 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."

6. Respectfully following the aforesaid decision, the orders impugned in these writ petitions are set aside. The writ petitions are allowed. The matter is remitted to the file of the second respondent. The second respondent shall verify the petitioner's Form-I returns filed on monthly basis and also confirm as regards the admissibility and genuinity and if they are found to be in order, the second respondent shall pass appropriate orders for refund. The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Additional Commissioner(CT) (Revision Petition),
   O/o. The Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk, Chennai.

2. The Assistant Commissioner(CT) (FAC),
   West Tower Street Assessment Circle,
   Madurai.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-12207[F] dated 18/03/2021)
+1 CC to M/s.SPL GP (SR-12483[F] dated 19/03/2021)

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