IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

**W.P.No.12762 of 2019 &
WMP.No.12977 of 2019**

Mohib Shoes Pvt. Ltd.
Represented by its Manager M.Vaseeq Ahmed,
No.65/30, Maddox Street,
Choolai, Chennai – 600 112. ... Petitioner

Vs

The Assistant Commissioner (ST),
Veperi Assessment Circle,
No.10, Greams Road,
Chennai – 600 006. ... Respondent

Prayer: Writ Petition 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 respondent herein in his notice in TIN No.33790523748/2015-16 dated 07.03.2019 confirmed in the proceedings dated 08.03.2019 and quash the same and issue a direction to consider and pass orders of refund as per the Form-W for the month of July 2015 filed on 25.02.2016.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mr.V.Prashanth Kiran
Government Advocate

O R D E R

Heard Mr.N.Inbarajan, learned counsel for the petitioner and Mr.V.Prashanth Kiran, learned Government Advocate for the respondent.

2.The petitioner is a private limited company and claims to have been engaged in export sales. Sales to exporters have been treated as zero rated sales in the returns filed for the year 2015-2016. Thus, and since there was nil output to tax liability, available Input Tax Credit (in short 'ITC') was claimed in terms of Section 18(3) of the Act read with Rule 11(2) of the VAT Rules, 2007, as a refund, in prescribed form, being Form-W.

3.Form-W has been filed, admittedly, belatedly, and beyond the period of 180 days as provided for under the Rules. The form ought to have been filed within the period of 180 days from the date of exports as per Section 18 of the TNVAT Act, 2006, but has been filed on 25.02.2016 with a delay of less than a month. However, the delay as aforesaid, is not fatal to the claim of refund, and for this purpose, one need only refer to the oft-quoted decision of this Court in the case of *R.K.Knits Vs. Assistant Commissioner (CT), Adyar-II Assessment Circle, Chennai and Others* [2015 (84) VST 521 (Mad)] that has been consistently, been followed in several other cases.

4.The issue dealt with in that matter is identical to the present one, and that assessee too had filed the form-W belatedly. However, this Court had concluded that the petitioner was entitled for refund of ITC, its entitlement to ITC itself not being disputed. Thus, the delay in filing of Form W would not militate against its claim as it was only a procedural requirement that must not stand in the way of a substantive claim.

5. The conclusion as above would apply on all fours to the present matter as well in light of the undisputed position that (i) the assessee is an exporter (ii) the turnover attracts zero rate of tax (iii) there are no taxable sales, either domestic or interstate (iv) monthly returns are being filed in time, disclosing the turnover as well as the carry forward of ITC (v) with the filing of the returns in time, assessments are deemed to have been completed as on 31.10.2016 as deemed assessments accepting the returns filed by the petitioner including the component of refund sought for by it.

6. That apart, learned Government Advocate seeks to distinguish the decision of *R.K.Knits* (supra) relying on the judgement of the Hon'ble Supreme Court in the case of *ALD Automotive Pvt. Ltd. Vs. The Commercial Tax Officer and Ors.* [2018 (70) GST 751 (S.C.)], wherein the provisions of Section 19(11) of the TNVAT Act was challenged. Section

19(11) states as follows:

> "***Section 19 – Input Tax Credit -***
> *(11) In case any registered dealer fails to claim input tax credit in respect of any transaction of taxable purchase in any month, he shall make the claim before the end of the financial year or before ninety days from the date of purchase, whichever is later."*

7. In the context of the provision as above, the Hon'ble Court held that the timeline for claim of ITC was mandatory and sacrosanct and there was no indication in the Statute for extension of time. It was thus mandatory and a pre-condition for consideration of the claim for utilisation of ITC.

8. They also noticed the earlier judgment in the case of *Jayam and Co. Vs. Assistant Commissioner and Another* [2016 (15) SCC 125], wherein the provisions of Sections 19(20), 3(2) and 3(3) of the Act had been challenged. In *Jayam and Co.*, the proposition that was settled was that ITC could not be claimed as a matter of right as it was, but a concession extended to the Assessee by the State.

9.The Act provides for the set of ITC as against output tax. Section 19(11) grants a benefit to the assessee stating that if an assessee has failed to set-off ITC in respect of output tax liability in any month, then, he shall have the benefit of an extended time limit for such claim, that is, before the end of financial year or before 90 days from the date of purchase, whichever was later, to make such claim.

10.The above claim, once made, would have an impact on the quantification of turnover itself and cannot be equated to a claim for refund. One of the submissions of the assessee in the cases of *ALD Automotive* and *Jayam and Co.* was that they had accumulated ITC and had a substantive right to set the same off as against output tax liability. The aforesaid argument was rejected by the Court holding that the availment of ITC cannot be claimed as a vested right.

11. Assessees are granted the benefit of ITC as a set-off against liability and such claim would have a substantial impact upon the computation of tax liability. It was thus necessary for an assessee to exercise this right within the time granted by statute. In the event the timeline had been missed, a further extension of time was granted under Section 19(11). An assessee who misses even the extended timeline had indeed missed the benefit of ITC availment and the returns of the assessee as filed, would be taken to be final.

12. In my considered view, the ratio of the aforesaid two judgements would not be applicable in this case. We are not concerned in this case with

a claim for utilisation of ITC for adjustment as against output tax liability, but a refund of accumulated ITC. The entitlement of the petitioner to ITC is undisputed. The fact that the petitioner has claimed the benefit of Section 16 relating to zero rated sales is also undisputed.

13.In such circumstances, the strict application of the timelines under the Act will not, in my considered view, be applicable, particularly, in a situation where the assessee concerned, is otherwise entitled in law, to the same. The filing of the form claiming refund cannot be equated to claim of ITC itself which would have an impact on the quantification of turnover itself. Thus, and for the reasons set out in the preceding paragraphs, the reliance placed by revenue upon the case of ALD Automotive Pvt. Ltd. does not further its case in the present matter.

14.Learned Government Advocate would submit that the case of *R.K.Knits* (supra) is pending in appeal before the Division Bench. However, seeing that there is no stay as on date, I would subscribe to the same view, and conclude that the petitioner's claim for refund is liable to be accepted.

15. In light of the discussion as above, this Writ Petition is allowed. Let the refund paid over expeditiously and in any event within a period of four (4) weeks from the date of issue of this order. No costs. Consequently,

connected Miscellaneous Petition is closed.

kbs **30.06.2022**

Index : Yes/No
Speaking Order/Non speaking Order

To
The Assistant Commissioner (ST),
Veperi Assessment Circle,
No.10, Greams Road,
Chennai – 600 006.

DR.ANITA SUMANTH, J.

kbs

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