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W.A.Nos.2761 and 2914 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.Nos.2761 and 2914 of 2021

1. The Assistant Commissioner (CT),
Adayar II Assessment Circle,
No.46, Greenways Road,
Chennai – 600 028.
2. The State of Tamil Nadu,
Represented by its Secretary,
Commercial taxes & Registration Department,
Fort St.George,
Chennai – 600 009.
3. The State of Tamil Nadu,
Represented by its Secretary,
Finance Department,
Fort St.George,
Chennai – 600 009.

... Appellants in both W.As.

Vs.

M/s.R.K.Knits,
Represented by its Partner Mr.Sushil Saraf,
No.15, Race Course Road, Guindy,
Chennai – 600 032.

... Respondent in both W.As.



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Prayer in W.A.No.2761 of 2021 : Writ Appeal filed under Clause 15 of the Letters Patent to set aside the Order dated 24.11.2011 passed in W.P.No.2784 of 2010 on the file of this Hon'ble Court and thereby allow the appeal.

Prayer in W.A.No.2914 of 2021 : Writ Appeal filed under Clause 15 of the Letters Patent to set aside the Order dated 24.11.2011 passed in W.P.No.2783 of 2010 on the file of this Hon'ble Court and thereby allow the appeal.

For Appellants : Mr.V.Prasanth Kiran
Government Advocate
(in both W.As)
For Respondent : Mr.R.Saravanakumar
(in both W.As)

ORDER

(Order of the Court was delivered by **C.SARAVANAN, J.**)

By this Common Order both the Writ Appeals are being disposed of.

2. These Writ Appeals are directed against the Order dated 24.11.2011 passed by the Writ Court in W.P.No.2783 of 2010 and etc. batch.

3. By the Impugned Order dated 30.03.2009 passed by the 1st Appellant herein has been set aside by the Writ Court. The dispute relates to the Assessment Year 2006-2007 (Quarter of March 2007).



4. Operative portion of the Order dated 24.11.2011 reads as under:-

“7. It is seen that the first respondent herein passed an order on 30.03.2009, rejecting the claim of the assessee, on the ground that the claim was made beyond the period of 180 days that the assessee had not filed any objection to the notice issued dated 19.09.2008. As far as the present case is concerned, admittedly, the petitioner's turnover relates to an export turnover attracting Zero Rate and there are no other taxable sales affected locally or inter-state, as per Section 18 of the Tamil Nadu value Added Tax Act. Section 19 of the said Act deals with Input Tax Credit. As per Sub Section (10) to Section 19, the registered dealer could claim input tax credit subject to the compliance of the conditions therein and Sub Section (11) states, where the registered dealer fails to claim input and tax credit subject to the compliance of the conditions therein and Sub Section (11) states, where the registered dealer fails to claim input tax credit in respect of any transaction of taxable purchase in any month, he could make the claim before the end of the financial year or before 90 days from the date of purchase, whichever is later. Rule 10 of the Tamil Value Added Tax Rules provides for the manner of claim on the Input Tax Credit. Rule 10(10)(a) provides for carrying over of the excess input tax credit of a month. Sub Rule (b) states, in case where the input tax credit as determined by the officer for any registered dealer, for a year, exceeds the tax liability for that year, it may be adjusted as against any arrears of tax or any other the adjustment, there is still an excess of input tax credit, the officer has to serve a notice in Form P, which is the notice of assessment and refund order, upon the dealer. As far as the present case is concerned, the Revenue does not deny, as a matter of fact, that the petitioner is an 1001 export unit; hence, entitled to claim refund of Input Tax Credit. The only claim of the Revenue herein is that, in so making the claim, the petitioner filed form 'W' as per Rule 11(2), which is a specific provision



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on a refund claim. A perusal of Rule 11 shown that the officer has to issue the refund of amount as specified in Form P, within ninety days from the days of service of the said Form, failing which, the Officer has to pay the interest at the prescribed rate. As per Sub Rule (2) to Rule 11, the refund claim under Form-W is applicable to cases where a dealer claims refund under Section 18(1) along with copies of invoices of bills of related purchases and the claim should be made within 180 days from the date of accrual of the said claim. As already pointed out, Section 18(1) of the Act, the claim is now sought to be rejected on the ground that the claim had not been made within 180 days.

8. A reading of the provisions thus makes clear two aspects – one as regards the filing of Form 'W' within a period of 180 days from the date of accrual of the claim that the Officer should pass an order within ninety days from the date of service of the said Form, failing which, the assessee would be entitled to interest, which is provided for under the provisions of the Act. A reading of the counter affidavit filed in this case shows the admitted fact that the assesses has been making a claim in terms of Rule 10(10) in its monthly returns and there is no denial of the fact that the claim had been made within the time as specified under the Act. Even if one has to invoke Section 18(1) of the Tamil Nadu Value Added Tax Act for making an application within 180 days, there is no denial of the fact that the returns filed in Form I was within the period of 180 days, as had been prescribed under Section 18(1). Thus, whether one goes by Section 18 or goes by Section 19 of the Tamil Nadu Value Added Tax Act, the fact remains that the assesses had been prompt enough to make its claim for refund in its monthly returns as regards the Input Tax Credit, a fact which cannot be overlooked by the Officer, to say that by reason of Form W filed belatedly, the assessee is not entitled to have the refund passed. On the specific query thus made to the Revenue



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as to whether the monthly Returns have not been taken up for consideration, it is informed that as of today the Revenue is to take up the monthly returns for assessment.

9. Section 22 prescribes the procedure laid down under the Act for the purpose of passing an Order on the Returns filed. Sub Section (1) of Section 22 states that the assessment in respect of a dealer shall be on the basis of a return submitted in the prescribed manner within the prescribed period. Sub Section (2) states that where the returns are accompanied by proof of payment of tax and the documents prescribed, the Officer shall accept the returns and pass an assessment order thereon. The selection by the Commissioner for detailed scrutiny is provided under Sub Section (3). As far as the present proceedings are concerned, given the fact that the assessee had made its claim in its monthly returns and the same had been done in accordance with the provisions of the Act without any delay and on the basis of the procedure given under Section 22 of the Act, it stands to reason that the first respondent should have taken up the said returns for consideration as per Section 22(2), and in that event, the claim of the assessee (a) and (b). In the face of admitted fact as to the filing of Form I remaining undisputed, I do not find any justification in the contention of the respondents herein that Form W filed beyond 180 days resulted in the rejection of the refund claim. In the light of the fact that the provisions on Input Tax Credit is a beneficial contemplate filing of monthly returns and that a claim could be Tax Credit refund claim, the proper course herein for the first respondent would be to take up the assessment expeditiously to consider the claim and pass order accordingly.

10. With the above observation, the writ petitions are allowed and the orders passed rejecting the claim of the petitioner, stands set aside. It is hereby made clear that



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the claim of the petitioner, hence, has to be worked out in terms of Section 22 of the Act as regards the claim made under Form I connected M.P.Nos.1 and 1 of 2010 stands closed. No costs.”

5. The dispute has arisen out of the refund claims filed by the Respondent on the exports made between January 2007 and March 2007 and between April 2007 and August 2007.

6. By an Order dated 30.03.2009 the 1st Appellant had rejected the refund claims filed by the Respondent for the refund of Input Tax Credit under Section 18(3) of Tamil Nadu Value Added Tax Act, 2006 which decision stands reversed by the Impugned Order of the Writ Court.

7. The details of the refund claims covered by the respective Orders passed by the 1st Appellant for the respective period are as under:-

Sl. No.	W.P.No.	W.A.No.	Refund Claim for the Period			
			March 2007	April 2007	July 2007	August 2007
1.	2784 of 2010	2761 of 2021	-	Rs.2,35,707/-	Rs.5,65,453/-	Rs.4,54,528/-
2.	2783 of 2010	2914 of 2021	Rs.5,57,807/-	-	-	-



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8. Mr.V.Prasanth Kiran, learned Government Advocate for the Appellants

would submit that refund claims were filed beyond 180 days from the date of expiry of period prescribed and therefore, the refund ordered is contrary to Section 18(3) of the Tamil Nadu Value Added Tax Act, 2006.

9. It is therefore submitted that the Impugned Order granting relief to the Respondent/Dealer is liable to be set aside.

10. The learned Government Advocate for the Appellants would further submit that the Writ Court ought not to have entertained the Writ Petition instead ought to have directed the Respondent/Assessee to file an appeal under Section 51 of the Tamil Nadu Value Added Tax Act, 2006.

11. On the other hand, the learned counsel for the Respondent/Dealer would submit that the Order of the Writ Court is well reasoned and does not warrant any interference in the hands of the Court.

12. That apart, the learned counsel for the Respondent/Dealer would further submit that the Writ Appeal is also without merits and therefore, it is liable to be dismissed.



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13. We have considered the arguments advanced by the learned Government Advocate for the Appellants and the learned counsel for the Respondent/Dealer.

14. There is no dispute that the refund claims were filed on 02.07.2008 for the respective periods and therefore, notices were issued to the Respondent to show cause as to why their refund claims filed by the Respondent should not be rejected as the refund claims were beyond the period of limitation.

15. Section 19 of the Tamil Nadu Value Added Tax Act, 2006 itself makes it clear that every dealer is entitled to avail Input Tax Credit on purchase of taxable goods specified in first schedule.

16. This is fortified by Section 18(1) of the Tamil Nadu Value Added Tax Act, 2006 although such sales or otherwise exempted from payment of tax. The goods exported are not exempted goods within the meaning of Section 220 of the Act for the purpose of denying Input Tax Credit.

17. Section 18(1) of the Tamil Nadu Value Added Tax Act, 2006 allows a



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dealer effecting zero rated sale to avail Input Tax Credit or refund of the amount of the tax paid on the purchase of goods specified in the First Schedule in capital goods subject to such restrictions and conditions as may be prescribed.

18. The provisions as it stood during the material period for refund of Input Tax Credit on zero rate sale used the expression “**accrual of such input tax credit**”.

19. As per Section 18(3) of the Tamil Nadu Value Added Tax Act, 2006, 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 accrual of such input tax credit such credit shall lapse to Government. Thus, refund is from the date of accrual.

20. Section 18(3) of the Tamil Nadu Value Added Tax Act, 2006 was later amended with effect from 1st of April 2010 as notified by G.O.No.24 dated 2nd March 2010. Corresponding changes were also made to Rule 11(2) of the Tamil Nadu Value Added Tax Rules, 2007.

21. For an easy reference under Section 18(3) of the Tamil Nadu Value



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Added Tax Act, 2006 as it stood during the period in dispute and after amendment vide Amendment Act, (9 of) 2010 as notified by G.O.No.24 dated

2nd March 2010 are reproduced below:-

Section 18 of the Tamil Nadu Value Added Tax Act, 2006	
Before Amendment during the period of dispute	After Amendment
18. Zero rating.. 1. 2. 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 accrual of such input tax credit such credit shall lapse to Government.	18. Zero rating.. 1. ... 2. ... 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 making zero rate sale such credit shall lapse to Government.

22. For better understanding it will also be useful to refer to Rule 11(2) of the Tamil Nadu Value Added Tax Rules, 2007 before amendment and after amendment vide Notification No.SRO A-11/2010 dated 6th April 2010 are reproduced below:-

Rule 11 of the Tamil Nadu Value Added Tax Rules, 2007	
Before Amendment	After Amendment
11. Refunds 1. ... 2. The dealer who claims refund due to sale effected by him under sub-section (1) of section 18 shall file an application in electronic Form W to the assessing authority along with	11. Refunds 1. ... 2. The dealer who claims refund due to sale effected by him under sub-section (1) of Section 18 shall file an application in electronic Form W to the assessing authority along with



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copies of invoices or bills of related purchases within one hundred and eighty days from the date of <u>accrual of such claim</u> . The assessing authority after verification of the correctness of the claim, shall issue refund within ninety days from the date of the receipt of the application in electronic Form W.	copies of invoices or bills of related purchases within one hundred and eighty days from the date of <u>making zero rate sale</u> . The assessing authority after verification of the correctness of the claim, shall issue refund within ninety days from the date of the receipt of the application in electronic Form W.
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23. Thus, as per Section 18(3) of the Tamil Nadu Value Added Tax Act, 2006, a refund claim had to be made within a period of 180 days from the date of accrual of such Input Tax Credit and not from the date of zero rate sales during the period in dispute.

24. Similarly, under Rule 11(2) of the Tamil Nadu Value Added Tax Rules, 2007, as it stood during the period in dispute, a dealer who has effected zero rated sales as is contemplated under Section 18(1) of the Tamil Nadu Value Added Tax Act, 2006 could file a refund claim in **electronic form W** from accrual of such claim.

25. As per Rule 11(2) of the Tamil Nadu Value Added Tax Rules, 2007 such dealer is entitled to refund of input tax paid or payable on such purchase of those goods which were exported as such or consumed or used in the



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manufacture of other goods that are exported as specified in sub section (1),
subject to such restriction and condition as may be prescribed.

26. The right to file refund claim in **FORM W** under Rule 11(2) of the Tamil Nadu Value Added Tax Rules, 2007 as extracted above will arise only on an accrual of such Input Tax Credit that is after the returns are assessed during the period in dispute.

27. In this case admittedly there are no records to indicate that returns were assessed and therefore the accrual of refund of such Input Tax Credit cannot be said to have arisen either on the date of purchase of the inputs or on the date of export that is Zero Rated Sales as defined in Section 2(44) of the Tamil Nadu Value Added Tax Act, 2006 or within 180 days of the actual export during the period in dispute.

28. That apart, Rule 10 (10) (a) of the Tamil Nadu Value Added Tax Rules, 2007 also makes it clear that where input tax paid in the month exceeds the output tax payable, the excess Input Tax Credit shall be carried over to the



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next month.

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29. Thus, the amount remaining after adjustment of tax liability on the local sales is to be refunded at the end of the year. Thus, whichever way one looks at whether under Rule 10 (10) (b) of the Tamil Nadu Value Added Tax Rules, 2007 or Section 18(3) of Tamil Nadu Value Added Tax Act, 2006 read with Rule 11(2) of the Tamil Nadu Value Added Tax Rules, 2007 as it stood during the period in dispute, the benefit of refund cannot be denied. The Respondent cannot deny legitimate benefit on the exports in the form of refund of Input Tax Credit.

30. Further we are of the view that export incentives in the form of refund of Input Tax Credit should not be denied and ought not to be denied as export bring precious foreign exchange to the country. These export incentives were conceived of and are being given at the time when the country was facing shortage of foreign currency when foreign exchange reserves were depleted impelling the Parliament as also the State Legislatures to boost exports in a bid



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to usher the foreign exchange into the country.

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31. Question of restrictions if any statutorily can be said to have been put in a place only after 2010 pursuant to amendment to Section 18(3) of the Tamil Nadu Value Added Tax Act, 2006 vide Amendment Act 9 of 2010 with effect from 1st April 2010 as notified by G.O.Ms.No.24AA dated 02.03.2010 and amendment to Rule 11(2) of the Tamil Nadu Value Added Tax Rules, 2007 vide Notification No.SRO A-11/2010 dated 06.04.2010 with effect from the date of amendment to Section 18(3) of the Tamil Nadu Value Added Tax Act, 2006. Therefore, we are inclined to dismiss the Writ Appeal filed by the Commercial Tax Department.

32. We are of the view that the Writ Petition is liable to be dismissed. We therefore, find no error in the order passed by the learned Single Judge.

33. While upholding the Order dated 24.11.2011 of the Writ Court, we make it clear that we have not expressed any opinion for the period after the



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amendment to Section 18(3) of Tamil Nadu Value Added Tax Act, 2006 vide Amendment Act No.9 of 2010 with effect from 1st April 2010, as notified by G.O.No. 24 dated 2nd March 2010 and amendment to Rule 11(2) of the Tamil Nadu Value Added Tax Rules, 2007 vide Notification No.SRO A-11/2010 dated 6th April 2010. We leave it open for the subsequent matter to be decided separately as and when opportunity comes before this Court.

34. These Writ Appeals stands dismissed with the above observations and directions. No cost.

[R.S.K., J.]

[C.S.N., J.]

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Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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