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W.P.No.27842 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.02.2024**

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.27842 of 2022

Flow Link Systems Pvt. Ltd.,
Represented by its Chief Financial Officer,
Sri.Sripathi S.Rao,
No.189/1A-C, Uthamapalayam,
Arasur, Avinasi Road,
Coimbatore-641 407.

... Petitioner

-VS-

The Assistant Commissioner (ST)(FAC),
Karumathampatti Assessment Circle,
Tiruppur.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in Ref. No.TIN:33472461887/2013-2014 and quash the proceedings dated 01.09.2022 passed therein and further direct the



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respondent to refund a sum of Rs.42,65,185/- on the basis of representation dated 04.08.2020 submitted by the petitioner, being the claim of ITC in relation to capital goods.

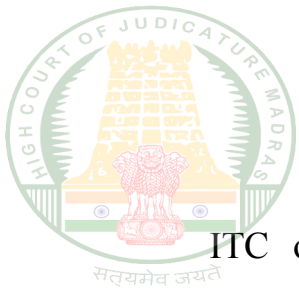
For Petitioner : Mr.B.Raveendran

For Respondent : Mr.T.N.C.Kaushik,
Additional Government Pleader (Tax)

ORDER

The petitioner assails the proceedings dated 01.09.2022 by which the petitioner's claim for refund of unutilised Input Tax Credit (ITC) under the Tamil Nadu Value Added Tax Act, 2006 (the TNVAT Act) was rejected.

2. The petitioner states that it is a manufacturer and exporter of steel casting and industrial valves. It was a registered dealer under the TNVAT Act and Central Sales Tax Act, 1956 (the CST Act). In relation to its exports, the petitioner asserts that Forms W were filed in time and ITC was claimed on capital goods from the year 2011 onwards. The petitioner points out that its exports are zero-rated and, therefore, it is entitled to refund of unutilised ITC. The petitioner further asserts that the office of the Accountant General had raised objections with regard to refund of unutilised



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ITC on capital goods. It is further stated that the Commissioner of Commercial Taxes had issued Circular No.22/2011 dated 20.10.2011 (Circular No.22) directing assessing authorities not to process and refund claims in respect of unutilised ITC on capital goods. In those circumstances, it is stated that the refund was not made. Thereafter, Circular No.12 of 2018 dated 21.06.2018 (Circular No.12) was issued by the Commissioner of Commercial Taxes clarifying that an assessee is entitled to refund of unutilised ITC on capital goods under applicable provisions of the TNVAT Act. Thereafter, the petitioner made a request for refund on 04.08.2020 and the said request was rejected by the impugned order. This writ petition was filed in the above facts and circumstances.

3. Learned counsel for the petitioner invited my attention to the proceedings of the assessing officer in the additional typed set of papers and pointed out that in each of those proceedings, it is recorded that the claim relating to refund of unutilised ITC on capital goods would be settled at a later date. He further contends that the refund claim was not settled in view of a Circular No.22. After the Commissioner of Commercial Taxes clarified



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that refund could be made under Circular No.12, he submits that the assessing officer was in a position to process refund claims. Therefore, learned counsel submits that the rejection of the refund claims calls for interference. He also points out that the rejection on the ground that the period of limitation under Section 27 of the TNVAT Act had expired is unsustainable.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, submits in response that a refund claim is required to be made within 180 days from the date of making the zero rated sale by the exporter. In this connection, he refers to sub-section (3) of Section 18 of the TNVAT Act. Since the petitioner did not make the refund claim within the specified period, learned Additional Government Pleader submits that the petitioner is not entitled to refund. In addition, by drawing reference to Section 27 of the TNVAT Act, he submits that the six year period prescribed therein is the outer limit for revising the assessment. For these reasons, he submits that no interference is warranted with the impugned order.

5. The definition of input in Section 2(23) of the TNVAT Act plainly

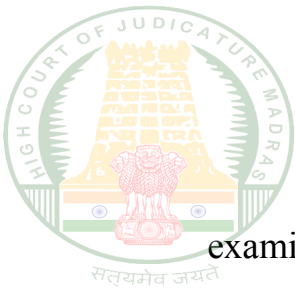


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covers capital goods. Section 18 thereof, which deals with zero rating, also expressly covers capital goods. The documents placed on record by the petitioner, such as the proceedings dated 19.02.2013 of the Assistant Commissioner (CT), Tiruppur, indicate that the petitioner had made refund claims within the time limit of 180 days specified in sub-section (3) of Section 18 of the TNVAT Act. It is also evident from the said proceedings that the claim for refund of ITC in respect of capital goods was deferred and it was stated that it would be settled later. On examining Circular No.12, it appears that Circular No.22 was superseded by the said Circular. It is also clear that refund claims in respect of ITC on capital goods were not processed in view of Circular No.22.

6. Thus, the petitioner has made the refund claims in time and cannot be faulted for the delayed processing of such claims by the respondent. If such claims were not processed on account of Circular No.22, which was superseded by Circular No.12, at a minimum, the limitation period should be reckoned from the date of such Circular. For such reason, the impugned order is unsustainable.

7. Notwithstanding the above conclusion, the refund claim has to be



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examined and determined based on documents pertaining to the availing of ITC as well as the export of products on zero rated basis. This factual determination cannot be undertaken by this Court. For such purpose, it becomes necessary to remand this matter.

8. Accordingly, the impugned order is quashed and the matter is remanded for reconsideration of the refund claim of the petitioner on merits. It is made clear that the assessing officer shall not go into the issue of limitation. The refund claim shall be considered and disposed of within a maximum period of two months after providing a reasonable opportunity to the petitioner.

9. The writ petition is disposed of on the above terms. There will be no order as to costs.

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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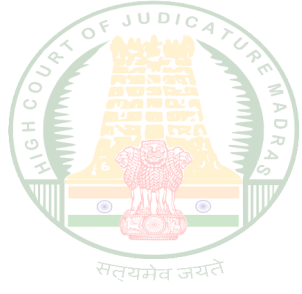


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