IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.01.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.1149 and 1150 of 2015
and
M.P.Nos.1 & 2 of 2015

M/s.Florind Shoes Private Limited
Rep.by its Director, Mr.K.Sahid Mansoor
No.12, College Road,
Chennai 600 006. ...Petitioner in both W.Ps

Vs.

The Assistant Commissioner(CT)
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai 600 031. ...Respondent in both W.Ps

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorariified Mandamus calling for the records of order of Respondent dated 02.01.2015 in CST/6170/2010-11 and quash the same and consequently direct the respondent to refund a sum of Rs.1,79,09,797/- (Rupees One Crore Seventy nine lakhs nine thousand seven hundred and ninety seven only) in W.P.No.1149 of 2015 and Rs.59,52,094/- (Rupees Fifty Nine Lakhs Two Thousand and Ninety Four only) in W.P.No.1150 of 2015 along with interest from 29.08.2014 in terms of Sec.42(5) of the TN VAT Act, 2006 till the date of payment.

For Petitioner : M/s.Adithya Reddy

For Respondent : Mr.Manohar Sundaram, AGP

O R D E R

The Writ Petitioner has come forward with the aforesaid prayer. This Court has passed an order dated 20.03.2014 in W.P.Nos.8234 & 8235 of 2014 which reads as follows:

> 5.In view of the above, the impugned orders are set aside. The petitioners are permitted to submit their reply within a period of fifteen days with all other documents, which they rely upon in so far as the exports are

> concerned on the condition that the petitioner deposits 15% of the tax amount alone for both the assessment year (not the penalty) on or before 31.3.2014. On such payment, the respondent shall consider the documentary evidence that may be produced by the petitioner and pass appropriate orders on merits and in accordance with law. It is made clear that if the amount, is not deposited, as directed, the respondent need not consider the objection and in such event, the impugned orders will be restored to file.

2. Since the facts in the earlier order are not disputed, I am not reiterating the facts mentioned in the earlier order. However, it is an admitted fact that based on the final order passed in the earlier writ petitions, which has granted 15 days time, the earlier impugned orders have been set aside. This Court has directed the petitioner to deposit 15% of the tax amount and in view of that, the original impugned order, no longer stands. On 25.03.2014, the first respondent has issued a notice under the Revenue Recovery Act proposing to attach the Bank Accounts pursuant to the impugned assessment order.

3. According to the petitioner, the cheques were given by the petitioner, but the respondent refused to receive the documents. That apart, the petitioner also preferred W.A.Nos.448 and 449 of 2014 against the order of the learned Single Judge, directing the first respondent to deposit 15% of the tax amount, is set aside and the first respondent was directed to complete the assessment within a period of eight weeks. On 30.05.2014, the assessment order was passed and refund order was also issued in favour of the petitioner.

4. The 1st respondent passed refund vouchers on the petitioner demanded the same. Since no refund was forthcoming from the respondent despite passage of six months, petitioner preferred W.P.Nos.31198 and 31199 of 2014 seeking the refund of the said amount. This Court has passed an order dated 20.11.2014 in the above said writ petitions which reads as follows:

> 6. Considering the facts stated supra, these writ petitions are disposed of directing the first respondent to consider the petitioner's representation dated 11.11.2014 and if there is no legal impediment, the 1st respondent should implement this order by issuing necessary vouchers within a period of four weeks from the date of receipt of copy of this order and if there is any legal impediment, the 1st respondent shall pass a speaking order and communicate the same to the petitioner within the said period.

No costs.

5. Thereafter, the respondent issued revision notice to the petitioner to revise the entire assessment order and restore the original order and that order was passed on 18.02.2013. The petitioner submitted that it is not open to the respondent to re-open a concluded assessment when it has already attained finality.

6. The petitioner has contended that the respondent revised the assessment order and imposing new tax on the petitioner on 2.01.2014 is not correct, more particularly, this Court has granted 15 days time in terms of the order of this Court dated 20.03.2014.

7.Since the petitioner has been deposited 15% of the tax amount and complied with earlier order of this Court, the impugned order is not liable to stand and the same is set aside. The matter is remitted to the authority to pass appropriate orders on merits and in accordance with law.

8. This Court makes it very clear that observation made in this writ petition is only to dispose of the writ petition and without being influenced by the earlier order passed by the Authority, after affording due opportunity to the petitioner to put forth his contentions and after hearing him, the respondent shall pass necessary orders within 15 days from the date of hearing. The order for refund money shall be passed within 15 days from the date of receipt of a copy of this order.

9. Accordingly, the writ petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kkd

To

The Assistant Commissioner(CT)
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai 600 031.

2 CCs to M/s.Adithya Reddy, Advocate SR.No. 2651 & 2658
1 CC to the Spl.Government Pleader, SR.No. 2763

W.P.Nos.1149 and 1150 of 2015
and M.P.Nos.1 & 2 of 2015

KM (CO)
PSL (05.02.2014)