IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.06.2015

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.16496 of 2015

Latha Enterprises,
123, Govindappa Naicken Street,
Chennai-1,
rep. by its Branch Manager,
Mr.V.V.R.Shesha Giri Rao ...Petitioner

Versus

The Assistant Commissioner of Commercial
Tax, Mannady West Assessment Circle,
Chennai-600 001. .. Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent to refund a sum of Rs.1,21,45,816/- based on the representation of the petitioner dated 20.04.2015 within a time frame fixed by this Court.

For Petitioner : Mr.S.Raveekumar

For Respondent : Mr.Manoharan Sundaram,
Additional Government Pleader (Tax)

O R D E R

This Writ Petition has been filed to issue a Writ of Mandamus, directing the respondent to refund a sum of Rs.1,21,45,816/- based on the representation of the petitioner dated 20.04.2015 within a time stipulated by this Court.

2. The learned Counsel for the petitioner would submit that the petitioner is an assessee on the file of the respondent under Tamil Nadu General Sales Tax Act, Tamil Nadu Value Added Tax Act and also under the Central Sales Tax Act. Being a dealer of Homeopathic Medicine namely, ''Ashwini Homeo Arnica Hair Oil'', which is a product produced under Drugs and Cosmetics Act, 1940 by Aswini Homeo and Ayurvedic Products Limited, the respondent demanded tax at a higher rate at 12.5% by proceedings dated 18.07.2014 for the assessment years 2008-2009 to 2013-2014 and demanded payment within 10 days. Therefore, the petitioner has filed W.P.Nos.24518 and 25422 of 2014 before this Court. Thereafter, in view of the conditional interim order of stay granted by this Court on 18.09.2014, the petitioner has deposited Rs.1,21,45,816/-, namely, 25% of the disputed tax. Finally, this Court by order dated 03.12.2014, allowed those writ petitions setting aside the assessment orders. Therefore, on that basis, the learned Counsel for the petitioner would submit

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that the petitioner is entitled for refund of the amount already deposited.

3. It is also submitted by the learned Counsel for the petitioner that the petitioner has already sent a representation dated 20.04.2015 to the respondent for the assessment years 2008-2009 to 2013-2014 to refund the sum of Rs.1,21,45,816/-. However, till date, no orders have been passed by the respondent. Hence, the petitioner has come up before this Court with this Writ Petition.

4. Mr.Manoharan Sundaram, learned Additional Government Pleader (Tax) takes notice for the respondent.

5. The learned Additional Government Pleader (Tax) would submit that while allowing the Writ Petitions in W.P.Nos.24518 and 25422 of 2014 etc. Batch, by order dated 03.12.2014, by setting aside the impugned orders therein, this Court remanded the matters to the 2nd respondent, namely, the Assistant Commissioner of Commercial Tax, Mannady West Assessment Circle, Chennai for fresh consideration also directed the Assessing Officer to afford opportunity of personal hearing to the petitioner and thereafter to pass an order. But, till date, no final order is passed by the Assistant Commissioner of Commercial Tax, Mannady West Assessment Circle, Chennai, the respondent herein. When that be so, the question of entertaining the representation of the petitioner to refund the deposited amount does not arise.

6. I find some force on the submissions of the learned Additional Government Pleader appearing for the respondent.

7. In my considered view, in the absence of any final order being passed by the respondent as directed by this Court on 03.12.2014 in W.P.Nos.24518 and 25422 of 2014 etc. Batch, it would not be possible for this Court to give a direction to the respondent to refund the amount deposited by the petitioner. Therefore, first of all, the respondent is directed to pass final orders as directed by this Court on 03.12.2014 in W.P.Nos.24518 and 25422 of 2014 etc. Batch within a period of four weeks from the date of receipt of a copy of ths Order. After disposing of the same, it is needless to mention that the representation of the petitioner dated 20.04.2015 for refund of deposit shall also be considered.

8. With the above observation, the Writ Petition is disposed of. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

The Assistant Commissioner of Commercial
Tax, Mannady West Assessment Circle,
Chennai-600 001.

+1 cc to Mr.S.Raveekumar, Advocate,SR.28892

+1 cc to Spl.Government Pleader,SR.28565.

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