IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.04.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.9501 of 2015

M/s.Shah Brothers
Rep. By its Partner Hemenshah
48/171, Mount Road (Basement)
Coonoor, Nilgiri District ... Petitioner

Vs.

1.The Assistant Commissioner (CT)
Coonoor Assessment Circle
Coonoor, Nilgiri

2.The Commissioner of Commercial Taxes
Ezhiladam, Chepauk
Chennai - 600 005 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus by calling for the records of the first respondent in his proceedings in L.Dis.No.66/2015/A4 dated 28.01.2015 and quash the same as illegal and direct the first respondent to issue refund voucher for Rs.6,87,807/-.

For Petitioner : Mr.S.Ramanathan

For Respondents : Mr.Kanmani Annamalai
Additional Government Pleader (Tax)

O R D E R

The petitioner has come forward with this writ petition to quash the proceedings of the first respondent in L.Dis.No.66/2015/A4 dated 28.01.2015 and also to direct the first respondent to issue refund voucher for Rs.6,87,807/-.

2.The petitioner is a registered dealer under the TNVAT and CST Acts and are exporters of tea. The petitioner filed Form W manually before the first respondent on 07.06.2012 for refund of ITC of Rs.6,97,807/- on the export sales made for the month of January 2012 to March 2012 . The first respondent sent a notice dated 09.07.2012 stating that as per the circular of the Principal Commissioner of Commercial Taxes dated 20.10.2011 all refund claims should be filed online and the claims filed manually on or after 01.01.2012 will not be processed. The petitioner submitted a representation stating that the rules do not prohibit filing the Form W Manually and hence, requested the first respondent to refund the ITC. The first respondent through his letter dated 17.02.2013 once again rejected the application. Thereafter, the petitioner once again submitted Form W and the same was also rejected by the first respondent by letter dated 29.04.2014. The petitioner submits that even after the petitioner brought to the notice of the first respondent the order passed by this Court on 04.10.2012 in W.P.No.26395 of 2012 whereby this Court directed the respondent herein to consider Form W filed manually and pass appropriate orders, Form W submitted by the petitioner was returned by the first respondent by his proceedings dated 28.01.2015. According to the petitioner, the impugned order is arbitrary and illegal as the Act or the Rule does not contemplate that the Form W should be filed only online and hence, he has come forward with the present petition to quash the impugned order and to direct the first respondent to issue refund voucher for Rs.6,87,807/-.

3. It is not in dispute that the issue is covered by the decision of this Court dated 22.08.2013 in W.P.No.23257 of 2013. The relevant paragraphs from the said order is extracted hereunder:

> "4. This Court in M/s.Limtex (India) Pvt. Ltd., Vs. The Commercial Tax Officer, Kotagiri Assessment Circle, Kotagiri (order dated 04.10.2012 in W.P.No.26395 of 2012) considered the validity o the circular issued by the Commissioner, Commercial Taxes, Chennai in the light of the provisions of Rule 11(2) of the Tamil Nadu Value Added Tax Rules 2007 and held that so long as there is no amendment of rules, the Commercial Tax Department was not justified in rejecting the applications submitted manually. In view of the said order, the first respondent was no correct in returning the applications.
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> 7. In the result, the impugned order dated 17.02.2013 are quashed. The petitioner is permitted to resubmit the refund claim application in Form W along with the connected records. In case the documents are resubmitted with Form W within a period of one week from the date of receipt of a copy of this order, the same shall be considered and disposed of by the first respondent on merits and as per law."

In view of the same, the writ petition is allowed on the same line which is extracted supra. No costs. The petitioner is directed to resubmit Form W within 15 days from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

gpa

To

1.The Assistant Commissioner (CT)
Coonoor Assessment Circle
Coonoor, Nilgiri

2. The Commissioner of Commercial Taxes
Ezhiladam, Chepauk
Chennai - 600 005

1 cc to Mr.S. Ramanathan, Advocate, Sr. 18302
1 cc to the Spl.Government Pleader, (Taxes), Sr. 18648

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GR (CO)
kk 21/4