IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.08.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.23573 of 2016

M/s.Canon India Private Ltd.,
7th Floor, Tower B.Building # 5,
DLF Epitome, DLF Phase III,
Gurgaon - 122002,
Haryana India ...Petitioner

Vs.

1. The Assistant Commissioner of
of Commercial Tax,
Vallurvarkottam Assessment circle,
10, Palaniappa Maaligai, Greams Road,
Chennai-600 006.

2. The Deputy Commercial Tax Officer,
Vallurvarkottam Assessment Circle,
10, Palaniappa Maaligai, Greams Road,
Chennai-600 006.

3. The Commissioner of Commercial Taxes,
Ehilagam, Chepauk,
Chennai - 600 005. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents to forthwith refund the amounts of Rs.80,68,760/-, and Rs.1,43,92,685/- being the excess tax paid by the petitioner in respect of the assessment years 2004-05 and 2005-06, respectively, together with applicable interest, under the provisions of the Tamil Nadu General Sales Tax Act, 1959.

For Petitioner :Mr.Krishna Srinivasan for
M/s.S.Ramasubramaniam Associates

For Respondents :M/s.Vasudha Thiagarajan
Additional Government Pleader

ORDER

Heard Mr.Krishna Srinivasan, learned counsel appearing for the petitioner, and M/s.Vasudha Thiayagarajan, learned Additional Government Pleader, for respondents.

2. The petitioner seeks for a direction upon the respondents to refund the amount of Rs.80,68,760/- and Rs.1,43,92,685/-, being the excess tax paid by the petitioner, in respect of two assessment years 2004-05 and, 2005-06, under the provisions of Tamil Nadu General Sales Tax Act, 1959.

3. On 01.08.2016, when the case came up for admission, the submission made by the learned Additional Government Pleader was that Appeal has been preferred as against the judgment of the Hon'ble Division Bench of this Court, in Tax Case (Revision) Nos.94 to 96 of 2014, dated 10.12.2014. Since he did not have written instructions, the matter was directed to be listed on 08.08.2016. On 08.08.2016, when the case was taken up, the learned Additional Government Pleader submitted that, Special Leave Petition is stated to have been filed on 04.07.2016, however, proof of filing was not produced. Therefore, to give one more opportunity, the case was directed to be listed today (31.08.2016). Even today, there is no written proof produced by the respondents to show that the Appeal has been filed against the order passed in Tax Case Revision Nos.94 to 96 2014.
On the other hand, the learned counsel for the petitioner has produced a letter, given by the Advocate on record, in the Hon'ble Supreme Court, dated 29.08.2016, which is to the following effect:-

> "Sir,
> This is to confirm that the undersigned had filed the Caveat Petition against the captioned judgment on December 04, 2015. The said Caveat was thereafter renewed from time to time, i.e., on February 02, 2016, Ma 02, 2016, and July 29, 2016.
>
> I have not been served with any Petition for Special Leave to Appeal against the captioned judgment. I have checked the case status on the website of the Supreme Court and have also made enquiries from the Registry of the Hon'ble Supreme Court of India, and as per the information provided to me, no petition for special leave to appeal has been filed till date. Further, based on enquiries made and to the best of my

> information, no petition for special leave to appeal is lying in defect. "

The learned counsel for the petitioner submitted that the aforesaid letter may be placed on record, and accordingly, the same is placed on record.

4. In terms of the above letter, there is nothing to show that the Appeal has been preferred as against the order passed in the Tax Case Revisions.

5. Facts of the case, which are necessary to be taken note of, are that, the assessment orders were passed by the second respondent, for the relevant years on 30.03.2007 and 22.11.2007, wherein, tax liability of the petitioner was enhanced and penalty was levied. This was challenged by the petitioner before the Appellate Authority, who dismissed the Appeal, by order, dated 12.06.2008. This order was put to challenge by the petitioner before the Tamil Nadu Sales Tax Appellate Tribunal, by way of filing Tax Appeals Nos.165 of 2005, 225, 226, 177 and 178 of 2008, 164 of 2010. The Tribunal, by its common order, dated 30.04.2014, allowed the petitioner's Appeals in part, in respect of T.A.Nos.177 and 178 of 2005, and upheld the contention of the petitioner, and struck down the Department's classification of certain products of the petitioner. Thereafter, the petitioner has challenged the order of the Tribunal on the limited scope, sofar as it relates to the classification of the petitioner's multi function network printers, by filing Tax Case Revisions before the Hon'ble Division Bench of this Court, which were taken on file in T.C.R.Nos.94 to 96 of 2014. The Hon'ble Division Bench, by a common order, dated 10.12.2014, allowed the Tax Case Revisions, and the operative portion of the order reads as follows:-

> " 15. We are not inclined to accept the reasoning given by the Assessing Officer, or that of the Appellate Assistant Commissioner and the Tribunal, which have totally misconstrued the classification of goods by splitting the functions of the multifunction machine. What is relevant is the nature of the equipment and its predominant use. In this case, the Image Runner is an equipment, which is an input and output device that works in conjunction with the computer and also has got scanning facility for the very same function of input and output device and therefore, it is clearly a "peripheral".

> 19. In the present case also, we find that the goods in question partake the character of "peripheral" of a computer and therefore, it is classifiable under Entry 18 (i) of Part B of Schedule I of TNGST.
>
> 20. For the foregoing reasons, we allow these revisions by answering the core issue formulated for consideration in these Revisions in favour of the assessee and against the Revenue. Consequently, the order of the Tribunal stands set aside. No costs."

6. This order was passed by the Hon'ble Division Bench, on 10.12.2014, and it is more than 1 1/2 years, and it is seen that the certified copy of the order was issued on 02.02.2015. Therefore, in the absence of any record to show that the Appeal has been preferred by the Revenue as against the order passed in Tax Case Revisions, this Court is inclined to accept the submission of the learned counsel for the petitioner that there is no Appeal preferred. Added to that, one more factor, which is very relevant is that, the Assessing Officer has given a letter, dated 26.04.2016, discharging two bank guarantees, which were furnished by the petitioner, for a sum of Rs.70,08,501/- and Rs.1,44,59 676/-. The said letters have been addressed to the Branch Manager, Royal Bank of Scotland, New Delhi Branch, New Delhi, and the letter is termed as "Discharge Letter". In the said letter, the Assessing Officer has confirmed to the Bank that they do not have any claims in respect of the aforesaid two bank guarantees, and requested that the said communication may be treated as Discharge Letter, for the purpose of the records of the Bank. Thus, if the Revenue thought fit to re-agitate the matter, obviously, the Assessing Officer would not have given such letters, discharging the bank guarantees.

7. In the light of the above, the Writ Petition is disposed of, by directing the first respondent to consider the petitioner's representations, dated 03.11.2015, 06.11.2015, 27.01.2016, 29.02.2016 and 05.04.2016, and effect refund of the admissible amount in accordance with law within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sd

To

1. The Assistant Commissioner of
   of Commercial Tax,
   Vallurvarkottam Assessment circle,
   10, Palaniappa Maaligai, Greams Road,
   Chennai-600 006.

2. The Deputy Commercial Tax Officer,
   Vallurvarkottam Assessment Circle,
   10, Palaniappa Maaligai, Greams Road,
   Chennai-600 006.

3. The Commissioner of Commercial Taxes,
   Ehilagam, Chepauk,
   Chennai - 600 005.

2 ccs to M/s.Ramasubramaniam & Associates, Advocates, sr.49347
1 cc to Special Government Pleader(Taxes), sr.49501

Writ Petition No.23573 of 2016

bvr co
kra 15.09.2016