IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.12.2016
CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.42769 of 2016

M/s.Kalyan Jewellers India Ltd
Rep by its Manager ... Petitioner

Vs.

The Assistant Commissioner
Commercial Taxes,
Gandhipuram Circle,
Coimbatore. ... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondent herein to issue refund voucher for the excess amount of Rs.4,98,07,343/- as per the refund order in Form P dated 05.09.2013 for the assessment year 2012-13 in TIN No.33272183607 to the petitioner in accordance with Section 42(5) read along with Rule 11(1) of the Tamil Nadu Value Added Tax, 2006.

For Petitioner : Ms.P.T.Asha
for M/s.Sarvabhauman Associates

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader (Taxes)

O R D E R

1.On the previous date i.e., 07.12.2016, I had granted short accommodation as the main counsel for the petitioner was not available.

2.Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who appears for the respondent is present in Court on advance notice. He says, he has taken instructions in the matter.

3.To be noted, in effect, the petitioner is aggrieved by the fact that despite a communication dated 24.05.2016, issued by the Commissioner of Commercial Taxes to the respondent to carry out the directions contained therein, the same have not been carried out.

4.Since, the communication is brief, I intend to extract the same for the sake of convenience:

> “The petitioner erstwhile Kalyan Jewellers Salem Pvt Ltd in the reference cited (an assessee in the books of Assistant Commissioner, Gandhipuram Assessment Circle) stated that the assessing officer has completed the assessment till September 2012 and finally issued a refund order in Form 'P' for Rs.4,98,07,343/ along with revised assessment order on 05.09.2013; that instead of issuing refund as per the assessment order, the assessing authority has issued notice on 08.12.2015 wherein proposed to reverse ITC adopting a wrong formula in which entire stock transfer made outside to the state is taken in formula adopted for the calculation of proportionate ITC reversal, instead of considering the stock transfer made to outside the state out of local purchase as decided in the assessment order dated 05.09.2013, and requested to drop incorrect revision proceedings and issue refund; This representation seems to be correct.
>
> In view of the above, a copy of the representation cited is forwarded herewith to instruct the Assessing Officer to take necessary action to refund the amount as per provisions of law.”

5.It would be evident, the Commissioner of Commercial Taxes has instructed the Assessing Officer to take necessary action to refund the amount adverted to in the earlier part of his communication, albeit, as per provisions of law.

6.Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who appears for the respondent says that the matter concerning refund is being processed and that the needful will be done within two weeks from today.

6.1.The said statement is taken on record.

7.The writ petition is disposed of in terms of the statement made before me by Mr.S.Kanmani Annamalai. No costs.

8.List for compliance on 09.01.2017.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Assistant Commissioner
Commercial Taxes,
Gandhipuram Circle,
Coimbatore.

+1 cc to Special Government (T) sr 72680

W.P.No.42769 of 2016

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