IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.16634 of 2017

Polyfines India Limited,
Rep. by its Managing Director,
Umaid Mal Jain,
15/349 Mettupalayam Road,
Coimbatore - 43. ... Petitioner

..Vs..

1. The Assistant Commissioner (CT)
   Mettupalayam Road Circle,
   Coimbatore.

2. The Appellate Deputy Commissioner (CT) Main,
   Coimbatore.

3. The Secretary
   Tamil Nadu Sales Tax Appellate Tribunal,
   (Additional Bench)
   CT Buildings, Dr.Balasundaram Road,
   Coimabtore - 18. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the first respondent herein to give effect to the order of the third respondent herein dated 24.10.2016 in CTSA.No.204/2009 as provided under Section 39-A of the TNGST Act, 1959 (Section 62 of the TNVAT Act, 2006) read with Rule 14 (22) of the VAT Rules, 2007 as per their representation dated 20.12.2016 with interest.

For Petitioner : Mr.N.Inbarajan

For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.N.Inbarajan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent. With the consent of either side, the Writ Petition itself is taken up for disposal.

2.The petitioner, who is a registered dealer on the file of the first respondent, are engaged in manufacturing PVC Suction Hose and Transparent Hose and they are engaged in effecting local sales as well as interstate sales. The dispute in the present writ petition pertains to the assessment year 2005-06 under the provisions of the Tamil Nadu General Sales Tax Act [TNGST Act]. The returns filed for the said year was accepted initially but subsequently it was revised and tax was demanded. The petitioner filed an appeal before the second respondent in AP.No.18/2009 which was allowed by order dated 22.04.2009 setting aside the revision of assessment levying higher rate of tax. The revenue preferred further appeal to the third respondent Tribunal under Section 36(1) of the TNGST Act. The said appeal which was registered as CTSA No.204/2009 was dismissed by the Tribunal by order dated 24.10.2016 confirming the order passed by the First Appellate Authority, the second respondent thereby confirming the assessment at 4%. By way of this writ petition, the petitioner seeks for a direction upon the first respondent to give effect to the order passed by the third respondent Tribunal by considering their representation dated 20.12.2016. The said representation was delivered in the office of the first respondent on the same date as could be seen from the letter delivery book. In the said representation, the petitioner stated that in view of the dismissal of the appeal filed by the revenue before the third respondent Tribunal, they are entitled to refund of Rs.1,52,000/- which was paid by them on 24.12.2008. Therefore they requested that the said amount may be refunded or they may be permitted for adjustment of the same in payment of the tax for the current dues.

3.Learned Government Advocate appearing for the respondents would submit that it is not known as to whether a tax case (revision) has been filed by the revenue as against the order passed by the third respondent Tribunal.

4.Taking into consideration the date of the order passed by the Tribunal, it prima facie appears that even if a revision is to be filed as of now, it would be barred by limitation. However, even assuming that a revision petition was filed before this Court as against the order of the Tribunal, then the revenue ought to have numbered the revision petition and obtained an order of stay from the Hon'ble Division Bench of this Court, failing which, the Department has no other option except to refund the tax collected from the petitioner or permit them to adjust the same towards the current dues.

5.In the light of the above, the revenue is granted six weeks time to work out their remedy as against the order passed by the third respondent Tribunal and obtain an order of interim stay, failing which, the first respondent shall permit the petitioner to adjust the tax paid as against the current dues if there is no other legal impediment for doing so.

6.With the above observations and directions, the writ petition is disposed of. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

cse

To

1. The Assistant Commissioner (CT)
   Mettupalayam Road Circle,
   Coimbatore.

2. The Appellate Deputy Commissioner (CT) Main,
   Coimbatore.

3. The Secretary
   Tamil Nadu Sales Tax Appellate Tribunal,
   (Additional Bench)
   CT Buildings, Dr.Balasundaram Road,
   Coimabtore - 18.

+1cc to M/S.N.Inbarajan, Advocate Sr. 45834
+1cc to the Special Government Pleader, Sr. 46156

W.P.No.16634 of 2017

AR(IV)
VR(10/07/2017)