IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.17344 & 17345 of 2017

M/s.Mallur Siddeshwara Spinning Mills (P) Ltd.,
Attayampatty Road, Athanur, Rasipuram,
Namakkal District - 636 301.
... Petitioner in both WPs.

Vs.

The Assistant Commissioner (CT),
Rasipuram, Namakkal District.
... Respondent in both WPs.

Prayer in W.P.No.17344 of 2017: Petition filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARI call for the records of the impugned order in TIN 33093160593/2014-15 dated 14.06.2017 from the files of the respondent herein, quash the same.

Prayer in W.P.No.17345 of 2017: Petition filed under Article 226 of the Constitution of India to issue a WRIT OF MANDAMUS to direct the respondent herein to grant the refund of the erroneously reversed Input Tax Credit of Rs.18,31,260/- as prayed for by the petitioner herein vide its application dated 06.03.2016.

For Petitioner : M/s.Aparna Nandakumar
(in both WPs.)

For Respondent : Mr.K.Venkatesh,
(in both WPs.) Government Advocate.

C O M M O N O R D E R

Heard M/s.Aparna Nandakumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent. With the consent on either side the writ petition itself is taken up for disposal.

2.The petitioner who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred as the "TNVAT Act") and the Central Sales Tax Act, 1956 (hereinafter referred as the "CST Act") is before this Court challenging an order dated 14.06.2017, which is an order passed by the respondent on an application filed by the petitioner under Section 84 of the TNVAT Act.

3.The learned counsel for the petitioner would submit that the respondent failed to see that the provisions of Section 19 (11) of the TNVAT Act and the time limit prescribed therein would be applicable only in the case of belated claim of ITC and not for a refund claim of excess payment of tax or excess reversal of ITC. Further it is submitted that the respondent failed to see that the provisions of Section 42(5) of the TNVAT Act does not prescribe any time limit for application for refund claim. On the other hand, it prescribes time limit of 90 days for refund of the excess payment of tax from the assessment. Further it is submitted that factually there are several errors committed by the respondent viz., the excess reversal of ITC which is equivalent to excess payment of tax and as a result, self assessment has to be refunded in accordance with the provisions of Section 42(5) of the TNVAT Act.

4.In my considered view, the issues raised by the petitioner are not purely legal issues but the issues which require both factual and legal aspects which has to be gone into. Therefore, the petitioner has to necessarily avail the remedy provided under the Act. It is not disputed that as against the impugned order, a revision lies to the Joint Commissioner of the concerned jurisdiction and therefore, the petitioner has to first avail such a remedy and raise all contentions before the revisional authority before resorting to invoking the extraordinary remedy before this Court in Article 226 of the Constitution of India. For such reason, this Court not inclined to entertain the writ petition but would grant liberty to the petitioner to file a revision petition before the concerned revisional authority and if such a revision petition is filed within 15 days from the date of receipt of a copy of this order, the revisional authority shall decide the writ petition on merits and in accordance with law after affording an opportunity of personal hearing to the petitioner within a period of four weeks from the date on which the personal hearing is concluded. It is made clear that the petitioner is entitled to raise all factual and legal issues before the revisional authority.

5.With the above observations and directions the writ petition in W.P.No.17344 of 2017 stands disposed of. In the light of the direction issued, W.P.No.17345 of 2017 praying for grant of refund is closed, leaving it open to the petitioner to workout the remedies after the order is passed by the revisional authority. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

abr

To

1.The joint Commissioner Commercial Taxes,
Salem.

2.The Assistant Commissioner (CT),
Rasipuram, Namakkal District.

+1cc to M/s.Aparna Nandakumar, Advocate 48193
+1cc to the Special Government Pleader (Taxes) Sr. 48266

W.P.Nos.17344 & 17345 of 2017

AR(V)
VR(21/07/2017)