IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.07.2017

Coram

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

Writ Petition No.2485 of 2006 (T)

(O.P.No.175 of 2004)

Tvl. C. K. C. M. Khadersha and Bros.
rep. by its Partner,
C.K.C.M. Mahaboob Subhani. ...Petitioner

Vs

The Deputy Commissioner (C.T.)
Madurai Division,
Madurai - 625 020. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records pertaining to the proceedings of the respondent, dated 09.12.2003, in ROC A12/1325/2002, and to quash the same and consequently, to direct the respondents to refund the excess amount paid by the petitioner for the assessment year 1992-1993 in TNGST No.520996 as per the Certificate of Settlement, dated 31.03.2003, issued by the respondent in Form No.IV, under Rule 5 (1) of the Tamil Nadu Sales Tax (Settlement of Disputes) Act and Rules 2002 in view of striking down of Section 6 (4) as violative of Article 147 of the Constitution, in the light of the judgement reported in 132 STC 306 in the case of (Nagalakshmi & Co. Vs. State of Tamil).

For Petitioner : Mr.N. Muralikumar

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

This Writ Petition, which was initially filed before the Tamil Nadu Taxation Special Tribunal, as Original Petition has been transferred to the file of this Court and re-numbered as Writ Petition No.2485 of 2006.

2. Heard Mr.N. Muralikumar, the learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, the learned Additional Government Pleader for the respondents.

3. The petitioner has filed this Writ Petition, challenging the order passed by the Deputy Commissioner (CT), Madurai, dated 09.12.2003, by which, the petitioner's application for refund of the excess amount of tax paid by them after the assessment for the relevant year, which was settled under the Samadhan Scheme framed under Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 (hereinafter, referred to as the Act) has been refused on the only ground that, in terms of Section 6 (4) of the Act, if any amount paid by the applicant exceeds the amount determined, such excess amount would not be refunded. The said proviso to Section 6 (4) was struck down by the Tamil Nadu Taxation Special Tribunal in the case of (Nagalakshmi and Co. and another Vs. State of Tamil Nadu and others) reported in (2003) 3 STC 306, wherein, it is held as follows :-

> "From the above, we could see that the rate for determination of amount payable under Samadhan Scheme is made applicable in common to all dealers eligible under the Samadhan Scheme. Under the Scheme, as stated by the learned counsel for the petitioners, a distinction has been made in respect of quantum of amount payable between those, who has not paid the amount already and those, who had paid in excess of what was to be determined. When the amount under Section 6 (1) shall have to be determined strictly in accordance with the rates specified under Section 7, it is implied that any amount which falls short of determined amount has to be collected from the applicant and any amount paid in excess of determined amount has to be refunded to the applicant. This is the true spirit of the provision in section 6 (1). If any classification has to be made in respect of the payment by dealers, it has to be done on the basis of intelligible differentia and this aspect is not found in the provisions. Having offered to the Samadhan Scheme and directed determination of the amount payable only at the rates specified under Section 7, the further provision under Section 6 (4) which offends the true spirit of Section 6 (1) is unwarranted, otherwise, it is certain that section 6 (4) would violate article 14

> of the Constitution. In this view of the matter, we are not agreeable to the contentions of the learned Senior Standing Counsel. In such a situation, we deem it proper to declare sub-section (4) of Section 6 as violative of article 14 of the Constitution. Accordingly, we declare that sub-section (4) of section 6 violates article 14 of the Constitution of India."

4. In the light of the above decision, the stand taken by the respondent is wholly incorrect and the impugned order calls for interference.

5. Accordingly, this Writ Petition is allowed, the impugned order is set aside, with a direction to the respondent to effect the refund of excess amount of tax to the petitioner or adjust the same with regard to the current assessment. No costs.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To
The Deputy Commissioner (C.T.)
Madurai Division,
Madurai - 625 020.

+1 CC to Mr. MCGAN LAW FIRM Advocate SR.NO.54639
+1 CC to Government Pleader SR.No.54475

Writ Petition No.2485 of 2006 (T)

RR(CO)
VC (28/10/2017)