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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD).Nos.7282 & 7283 of 2017

M/S.Standard Press (India) (Pvt) Ltd.
Rep. By it's Director Mr.Yennarkey
R.Chiranjeevi Rathnam,
34-G, Poothaiyammal Nagar,
Near Y.R.T.V. School, Sivakasi,
Virudhunagar District. .. Petitioner in both Petitions

Vs.

The Commercial Tax Officer – III,
Sivakasi. .. Respondent in both Petitions

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondent to give effect to the Tribunal order in MTA.Nos. 13 & 14 of 2010, respectively dated 01-09-2016 by passing revised order and to refund the amount of taxes paid in excess along with interest as contemplated under section 24 (4) of the TNGST Act.

For Petitioner : Mr.R.D.Ganesan (in both Petitions)
For Respondent : Mr.R.Karthikeyan
Additional Government Pleader
(in both Petitions)

O R D E R

The Writ Petitions have been filed to direct the respondent to give effect to the Tribunal order in MTA.Nos. 13 & 14 of 2010,respectively dated 01-09-2016 by passing revised order and to refund the amount of taxes paid in excess along with interest as contemplated under section 24 (4) of the TNGST Act.

2.Heard Mr. R.D.Ganesan, learned Counsel appearing for the petitioner, Mr.R.Karthikeyan, learned Additional Government Pleader for Respondent

3.The brief facts that are necessary for the final disposal of the Writ Petitions are as follows:

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3.1. By the assessment order dated 12.12.2008, originally made, the respondent determined the total and taxable turnovers at Rs.10,53,38,396/- & Rs.9,03,78,934/-(in W.P.(MD) No.7282 of 2017) respectively and Rs.15,91,99,406/-, Rs.8,99,24,113/- (in W.P.No.7283 of 2017) respectively. The petitioner preferred independent appeals before the Appellate Deputy Commissioner, Virudhunagar in AP Nos.4 & 5 of 2009, respectively. The assessment orders were modified by the appellate authority by an order dated 04.03.2009. Hence, the petitioner filed the Second Appeal before the Sales Tax Appellate Tribunal (Additional Bench), Madurai in MTA Nos.13 & 14 of 2010, respectively. The Second Appeals were allowed by an order dated 01.09.2016 by the Tribunal. The petitioner, therefore, claims that, under Section 24(4) read with Rule 34 of the State Act, the order passed by the appellate authority should be given effect to by the assessing authority by passing fresh order and he has to refund without interest within 3 months from the date of communication of the order of the appellate authority any excess tax found to have been collected. Since the respondent failed to give effect to the order passed in MTA.Nos.13 & 14 of 2010, the petitioner has made a representation and thereafter he had filed the present writ petition. The issue in this writ petition has already been decided in number of cases. The order passed by this Court is also satisfied with the petitioner, entitled to leave in view of the section 24(4) read with Rule 23(A) of Tamil Nadu General Sales Tax Act,1959

3.2. The learned Counsel for the respondent admitted that the petitioner is entitled to refund of excess amount collected pursuant to original assessment and that the respondent cannot retain the amount, which is in excess of the tax calculated as per the modified order of the second appellant Authority. However, he submit that the department may be permitted to deduct any amount which may be found due from the petitioner pursuant to any subsequent order of assessment in future. The request of the respondent is declined for the simple reason that this suggestion is not in tune with any equitable principle or supported by any rule. This suggestion is against public policy. The learned counsel for the petitioner relied upon several judgments of this Court, wherein this Court has allowed similar Writ Petitions by directing the respondent to give effect to the appeal order by passing a revised order and by directing to refund the amount of tax paid in excess along with interest to the assessee within a period of four weeks.

3.3. In all cases no such direction was issued to enable the respondent from making any deduction based on subsequent order of assessment. Hence, these writ Petitions are allowed and the respondent is directed to give effect to the order passed in MTA.Nos.13 & 14 of 2010 dated 01.09.2016 by the Sales Tax Appellate Tribunal by passing revised orders and respondent is also directed to refund the amount of tax paid in excess along with interest to the petitioner as contemplated under Section

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24(4) of Tamil Nadu General Sales Tax Act, 1959.

3.4. Accordingly these Writ Petitions are disposed of. This exercise shall be done with in a period of six weeks from the date of receipt of a copy of this order. No costs.

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Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

GNS/TA

To

The Commercial Tax Officer – III,
Sivakasi.

+2 cc to Mr.R.D.GANESAN, Advocate SR.No. 53860 & 53861

ORDER MADE IN
W.P.(MD).No.7282 & 7283 of 2017
25.04.2017

SMA/MSA/SAR-3/12.05.2017:3P/4C