HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE MS. JUSTICE J. UMADEVI

<u>Writ Petition No.41484 of 2016</u>

<u>ORDER</u>: (per V. Ramasubramanian, J.)

Aggrieved by the failure of the respondents to refund the amounts due to the petitioner on account of input tax credit and the excess payment made, the dealer under the A.P. Value Added Tax Act, 2005 has come up with the present writ petition.

2. Heard Mr. S. Dwarakanath, learned counsel for the petitioner and Sri Shaik Jeelani Basha, learned special standing counsel for the respondents.

3. The respondents have filed a counter affidavit contending inter alia that the books of accounts of the petitioner for the tax periods 2007-2008, 2008-2009 and 2009-2010 were audited and audit assessment proceedings were passed in Form VAT 305 dated 31-03-2011, resulting in an excess amount of Rs.21,82,008/- to be refunded to the petitioner. Similarly, for the tax period from 01-04-2010 to 31-03-2011, the Commercial Tax Officer, Kurupam Market Circle passed orders dated 12-03-2012 demanding the excess amount input tax of Rs.5,74,986/-. Therefore, even as per paragraph-5 of the counter affidavit filed by the respondents, a total amount of Rs.27,56,994/- became refundable to the petitioner.

4. But the amount has not so far been refunded on the ground that before making payment, the Department is obliged the cross-check the transactions of the dealer. Since the purchases made by

the dealer are voluminous and spread over the territorial jurisdiction of different assessing authorities, the respondents claim that unless the entire process of verification of transaction is completed, it is not possible to make payment of the fund. The respondents have also claimed that at least in respect of one Form 311, there were discrepancies. Therefore, the respondents want to exercise caution before making refund.

5. We have carefully considered the stand taken by the respondents in their counter affidavit. But the stand though *prima facie* appears to be technically correct, it cannot stand the scrutiny of law on a deeper analysis. This is for the simple reason that even as per the counter affidavit of the respondents, the audit assessment for the tax periods 2007-2008 to 2009-2010 was completed on 31-03-2011. The audit assessment for the period 2010-2011 was completed on 12-03-2012.

6. Let us take a hypothetical case that the cross verification now carried out by the respondents reveals certain discrepancies. Assuming that certain discrepancies are disclosed, the only action that the respondents are entitled to take is to reverse the input tax credit, by reopening the assessments. But the period for doing so has long expired. It must be remembered that the assessment proceedings against the petitioner were actually audit assessment proceedings and not normal self-assessment. Therefore, it will be futile on the part of the respondents now to proceed with cross verification, since it may lead them only to a point of no return.

7. In view of the above, the writ petition is allowed directing the respondents to process the refund application and make payment together with interest as applicable under the statute, within a period of 10 weeks from the date of receipt of a copy of this order.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 15-03-2017

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