In the High Court of Judicature at Madras

Dated : 18.1.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.1096 of 2018

M/s.Forward Shoes (India)
Pvt.Ltd., rep.by its Director ...Petitioner

Vs

The Assistant Commissioner (CT),
Periamet Assessment Circle,
Chennai-6. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the respondent to refund a sum of Rs.2,00,811/- paid towards the tax levied under Section 3(4) of the Tamil Nadu General Sales Tax Act for the assessment year 2003-04 together with interest to the petitioner.

For Petitioner : Mr.P.V.Sudakar
For Respondent : Ms.G.Dhana Madhri, GA

ORDER

Ms.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner seeks a direction to the respondent to refund a sum of Rs.2,00,811/- paid towards tax levied under Section 3(4) of the Tamil Nadu General Sales Tax Act, 1959 for the assessment year 2003-04 together with admissible interest.

3. It may not be necessary for this Court to go into the factual details. It would suffice to state that the petitioner succeeded before the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai in T.A.No.188 of 2007 dated 30.11.2010. The Tribunal followed the decision of the Hon'ble Division Bench of this Court in the case of Tube Investments of India Ltd. Vs. State of Tamil Nadu [reported in (2010) 36 VST 67] wherein it has been held that export sale was nothing but a sale, for which, an exigency of tax liability would not occur as provided under Section 3(4) of the Act.

4. It appears that as against the order passed by the Tribunal, the Revenue preferred a revision in T.C.R.No.42 of

2017, which was dismissed by the Hon'ble Division Bench of this Court on 16.11.2017 following the decision in the case of Tube Investments of India Ltd. Therefore, the petitioner states that they are entitled to refund of tax paid.

5. The learned Government Advocate submits that she has oral instructions from the Assessing Officer to state that if the petitioner gives a representation, the Assessing Officer will process it in accordance with law.

6. However, in my view, a representation may not be required to be given, since Rule 34 of the Tamil Nadu General Sales Tax Rules states that every order passed by the Appellate Tribunal should be given effect to by the Assessing Authority within three months from the date of communication of the authorization, any excess tax found to have been collected and for this purpose, shall serve upon the dealer a notice in Form C notifying the dealer of the adjustment of excess tax towards arrears, if any or if there are no arrears of tax due under the Act from the dealer or if, after such adjustment, there is still an excess, the Assessing Authority shall refund the amount of excess tax and along with such notice, he shall also send to the dealer, a voucher for claiming refund of that amount without interest from the treasury. Therefore, all that is required to be done is to follow the procedure under Section 34 of the said Rules.

7. Accordingly, the writ petition is disposed of with a direction to the respondent to implement the order passed by the Tribunal, which was confirmed by this Court in T.C.R.No.42 of 2017 dated 16.11.2017 and proceed in accordance with Rule 34 of the said Rules, within a period of three weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

(RS)
To
The Assistant Commissioner (CT),
Periamet Assessment Circle,
Chennai-6.
+1cc to Spl Government pleader SR.4650/18
+1cc to Mr.B.Raveendran SR.3878

WP.No.1096 of 2018

pvs(CO)
VUM(10.02.2018)