IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.10.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 35649 of 2016
and
W.M.P.Nos. 30638 and 30639 of 2016

M/s.Chennai Auto Ancillary Industrial Infrasture,
Upgradation Company,
Rep. By its Chairman
Mr.S.Shanmugam,
SIDCO Administrative Building,
Second Main Road, Ambattur Industrial Estate,
Chennai – 600 058. ..Petitioner

vs

1. The Deputy Commercial Tax Officer,
   Ranipet (IN) Check Post, Serkadu.

2. The Assistant Commissioner (CT),
   Gudiyatham (East) Assessment Circle,
   Gudiyatham.

3. The Assistant Commissioner (CT),
   Anbattur Assessment Circle,
   Chennai.

4. The Chairman & Managing Director,
   The Tamil Nadu Small Industries
   Development Corporation Ltd.,
   (A Government of Tamilnadu Undertaking)
   Thiru-Vi-Ka Industrial Estate,
   Near SIDCO Electronics Complex,
   Guindy, Chennai – 600 032. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the first respondent in GDN.NO.1/2012/2013 dated 20.06.2016 and the consequential proceedings dated 20.09.2016 and quash the same and further direct the first and second respondents to refund the one time tax of Rs.5,00,567/- collected from the petitioner for the machinery purchased by the petitioner from other State for their own use and which are capitalized under the fixed asset of the petitioner company and also available till date at the petitioner's site or at least order to transfer the tax collected from the petitioner to the third respondent.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.M.Hariharan
Additional Government Pleader
(Taxes) for R1 to R3

Mr.Abdul Saleem for R4

O R D E R

The relief sought for in the present writ petition is that is to call for the records of the impugned proceedings of the first respondent dated 20.06.2016 and the consequential proceedings dated 20.09.2016 and quash the same and further directs the first and second respondents to refund the one time tax of Rs.5,00,567/- collected from the petitioner for the machinery purchased by the petitioner from other State for their own use and which are capitalized under the fixed asset of the petitioner company and also available till date at the petitioner's site or atleast order to transfer the tax collected from the petitioner to the third respondent.

2. The learned counsel for the writ petitioner made a submission that the grounds raised by him for refund of tax had not been adjudicated with reference to the material purchased, by the Deputy Commercial Tax Officer/first respondent. Thus, the petitioner is constrained to move the present writ petition.

3. The learned Additional Government Pleader appearing on behalf of the respondents informed this Court that in respect of the refund of tax, the writ petitioner has to approach the Revisional Authority namely the Joint Commissioner of Commercial Taxes. In this regard, the learned counsel appearing on behalf of the respondents cited the decision of the Hon'ble Division Bench of this Court in ***WA.No.171 of 2013 dated 02.03.2018 (M/s.VR3 Animal Feeds Vs. Deputy Commercial Tax Officer)*** and it is relevant to extract Paragraph Nos.6 and 7:

> *"6. We therefore grant liberty to the appellant to file a revision before the Joint Commissioner challenging the order passed by the Deputy Commercial Tax Officer, Pennaiyar Bridge Check Post, which is impugned in the writ petition in W.P.No.33566 of 2012. In case, the appellant has already*

paid the tax, there is no liability to make statutory deposit. It is open to the appellant to produce materials to demonstrate that there is no statutory liability to pay tax on EMU Oil. The authority shall consider the entire factural matrix and pass a detailed order on merits. The question of refund of tax paid by the appellant would depend upon the ultimate orders to be passed by the Joint Commissioner. In case revision petition is filed within a period of four weeks from today, the same shall be considered and disposed of within a period of eight weeks.

7. The intra court appeal is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed".

4. This Court is of an opinion that when the refund of tax involves adjudication of certain factual matrix based on the documents and evidences, then the High Court cannot exercise the same under Article 226 of the Constitution of India. The complex facts and circumstances arising on account of certain factual disputes cannot be adjudicated in a writ jurisdiction and the same require verification of original documents and adducing of evidences. Thus, the grievances of the writ petitioner can be resolved by appropriate adjudication before the Revisional Authority namely the Joint Commissioner of Commercial Taxes.

5. The learned counsel for the writ petitioner made a point that even the original authority had taken long time for the disposal of his petition and he is liable to pay penalty, in the event of prolonging the issue and the Department is demanding compound penalty and therefore, the delay will cause great prejudice to the interest of the writ petitioner. Taking note of the grounds raised by the writ petitioner, this Court is inclined to direct the revisional authority namely the Joint Commissioner of Commercial Taxes, Vellore Division, Vellore, to entertain the revision petition, if any, filed by the writ petitioner and adjudicate the same by affording an opportunity to all the parties concerned and pass orders on merits and in accordance with law within a period of two weeks from the date of receipt of the revision petition and till the revision petition is decided by the Joint Commissioner, Commercial Tax, Vellore Division, no coercive action shall be taken by the revisional authority against the writ petitioner. The Registry of High Court is directed to return the original copy of the impugned proceedings to the learned counsel appearing for the writ petitioner.

6. With the above directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

12.10.2018

pns/sk

Internet:Yes
Index : Yes
Speaking speaking order

S.M.SUBRAMANIAM, J.
pns

To
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