BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 07.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.2248 of 2018

Tvl.Sri Karpaga Leathers,
Rep.by its Propreitor,
R.Muthu Palaniappan ... Petitioner

Vs.

The Assistant Commissioner (CT)-III,
Dindigul III Assessment Circle,
Commercial Taxes Building,
Sub-Collector Office Road,
Dindigul - 624 001. ... Respondent

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondent pass the order giving effect to the order of the Appellate Deputy Commissioner (CT), Madurai (North) in Appeal No.421/2015 (TNVAT) dated 24.05.2016 and to consequently to refund the excess tax paid by the petitioner.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.J.Gunaseelan Muthaiah,
Addl., Govt., Pleader

<u>ORDER</u>

The petitioner is registered as an assessee with the respondent. He suffered an order dated 15.10.2015 at the hands of the respondent. Questioning the same, he preferred an Appeal No.421 of 2015 before the Appellate Authority. By an inadvertent error, the petitioner included the disputed tax that was pending before the original authority in the appeal memorandum also. Therefore, the appellate authority while allowing the petitioner's appeal in toto, observed that as regards the levy of penalty of Rs.2,91,677/- relating to rejection of Form W for refund of ITC for export can be decided only after the revision proceedings get concluded. Thus, excepting the subject matter that was covered by the revision proceedings in all other respects the petitioner's case stood accepted by the appellate authority.

2.The grievance of the petitioner is that even though there is no ambiguity in the order passed by the Appellate Authority, the original authority namely, the respondent herein is acting as if the entire matter has been remanded to his file and that therefore the petitioner herein should be directed to produce the relevant account books. Therefore, all that the petitioner wants is that the order passed by the Appellate Authority must be given effect to.

3.No exception can be taken to the aforesaid request made by the petitioner. The respondent is directed to give effect to the to the order passed by the Appellate Authority made in appeal No.421 of 2015 dated 24.05.2016. Since the petitioner has already paid 25% of the disputed tax amount as a condition precedent for filing the statutory appeal, the same has to be refunded by the respondent. The petitioner had succeeded in the appeal proceedings. Therefore, the amount already paid by him has to be refunded to the petitioner. This writ petition is allowed. No costs.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner (CT)-III,
Dindigul III Assessment Circle,
Commercial Taxes Building,
Sub-Collector Office Road,
Dindigul - 624 001.

+ 1 cc TO Mr.A.Rooban , Advocate in SR No. 53428
+ 1 cc TO The Special Government Pleader in SR No. 53839

skm
AE/MK/SKN RSK/SAR1/01.06.2018/2P/4C

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