WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **12.07.2018**

CORAM:

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

W.P.(MD)No.20206 of 2015
and
M.P.(MD)No.1 of 2015

Tvl.Jaarmaaks Soft Tex (P) Ltd.,
Represented by its Director,
M.Vasudevan : Petitioner

Vs.

1. The Commissioner of Commercial Taxes,
   O/o. The Principal and Special
   Commissioner of Commercial Taxes,
   Ezhilagam, Çhepauk,
   Chennai-600 005.

2. The Commercial Tax Officer (Additional),
   Sattur Assessment Circle,
   Commercial Taxes Office,
   Kamarajarpuram,
   Sattur,
   Virudhunagar District-626 203. : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the second respondent in TIN No.33725782205/2012-13, dated 31.08.2015 and to quash the same and consequently, direct the second respondent to re-do the assessment afresh after providing the petitioner adequate opportunity.

For Petitioner : Mr.R.Veeramanikandan

For Respondents : Mr.B.Bhagavathi,
Government Advocate

******

ORDER

The petitioner made a claim for refund against export sales made by him for the months between April, 2012 and June, 2012 and August, 2012 and March, 2013. However, after some negotiations

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

with the department, he submitted a letter dated 31.08.2015 stating that he is willing to receive the refund on submission of Form-W to the tune of Rs.10,98,348/- instead of Rs.11,71,070/-. The authority refunded the amount as per the concurrence letter given by the petitioner through an order dated 31.08.2015 in TIN No.33725782205/2012-13. The said order is under challenge in the present Writ Petition.

2. It is the contention of the learned counsel for the petitioner that the petitioner agreed to receive the refund on submission of Form-W to the tune of Rs.10,98,348/- instead of his claim to the tune of Rs.11,71,070/-. In such an event, the authority should have accepted the consent letter and straightaway ordered refund. But, on the other hand, the detailed order on merits came to be passed, wherein ITC claimed by the petitioner has been reversed without notice.

3. Controverting the contentions, the learned Government Advocate appearing for the respondents would submit that on the submissions of the petitioner, reduction in the amount was made. Since the petitioner has given his consent, he cannot file any appeal against the order passed by the authority. Therefore, the Writ Petition is liable to be dismissed.

4. I have considered the rival contentions made on either side.

5. On perusal of the concurrence letter, it simply says that the petitioner was willing to receive the refund of Rs.10,98,348/- against the demand of Rs.11,71,070/- on submission of Form-W. In that case, the authority should have refunded the amount on the basis of negotiation and as per the consent letter given by the petitioner. On the other hand, the authority has gone into the merits of the case and passed an order in detail dealing with the transactions and ultimately, reversed the ITC claim made by the petitioner. In such transaction, it is incumbent on the authority to pass orders after getting the objections from the petitioner. However, the consent given by the petitioner would not entitle the authority to pass orders on merits. In such circumstances, it should be construed as an erroneous order. The only course available to the petitioner is to file an appeal or revision. The impugned order is passed on 31.08.2015 and the petitioner filed the present Writ Petition on 04.11.2015. Considering the periods spent on litigation before this Court, permission is granted to the petitioner to avail the alternative remedy of appeal or revision before the appropriate authority. The appropriate authority is directed to entertain the appeal or revision, if it is filed within a period of one month from the date of receipt of a copy of this order, without insisting on limitation period.

https://hcservices.ecourts.gov.in/hcservices/

6. The Writ Petition is disposed of with the above direction.

No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Writes)

WEB COPY

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner of Commercial Taxes,
   O/o. The Principal and Special
   Commissioner of Commercial Taxes,
   Ezhilagam, Çhepauk,
   Chennai-600 005.

2. The Commercial Tax Officer (Additional),
   Sattur Assessment Circle,
   Commercial Taxes Office,
   Kamarajarpuram,
   Sattur,
   Virudhunagar District-626 203.

Copy to:
The Section Officer,
ER Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.B.Rooban , Advocate in SR No. 72607
+ 1 cc TO The Special Government Pleader in SR No. 72814

SML
AE/PN/SAR3/23.07.2018/3P/6C

Order made in
W.P.(MD)No.20206 of 2015
Dated: **12.07.2018**

https://hcservices.ecourts.gov.in/hcservices/