BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.14063 of 2018

M/s.Sri Karthikeya Timbers,
No.95-D, Santhai Road,
Presently at 715/6 NH7 Madurai,
Bypass Road,
Dindigul-624 002,
Represented by its
Partner,
B.Senthil Kumar : Petitioner

Vs.

The Commercial Tax Officer-V,
Presently Designated as
The Assistant Commissioner (ST)-V,
Dindigul. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondent to give effect to the First Appeal order in AP.No.117/98, dated 09.08.1999 for the assessment year 1996-1997 by passing revised order and to refund the amount of taxes paid in excess along with interest as claimed in Form XXXIII vide Rule 23-A of the TNGST Rules, 1959 as contemplated under Section 24(4) of the TNGST Act.

For Petitioner : Mr.R.D.Ganesan

For Respondent : Mr.S.Dhayalan,
Government Advocate

ORDER

The petitioner has come forward with the present Writ Petition seeking for issuance of a Writ of Mandamus, directing the respondent to give effect to the First Appeal order in AP.No.117/98, dated 09.08.1999 for the assessment year 1996-1997 by passing revised order and to refund the amount of taxes paid in excess along with interest as claimed in Form XXXIII vide Rule 23-A of the TNGST Rules, 1959 as contemplated under Section 24(4) of the TNGST Act.

2. Mr.S.Dhayalan, learned Government Advocate, takes notice on behalf of the respondent.

3. The petitioner is a registered dealer in Timber, Steel and Paints. For the assessment year 1996-1997, the respondent has determined the total and taxable turnover of Rs.1,33,51,780/- and Rs.1,31,42,290/- respectively, vide his order in TNGST.5380102/96-97, dated 15.12.1997. Against the assessment order, the petitioner has filed an appeal before the Appellate Assistant Commissioner (CT), Madurai (North), in AP.117/98 and the said appeal was allowed on 09.08.1999. As per Section 24(4) of the Tamil Nadu General Sales Tax Act, 1959, the petitioner is entitled to the refund, as the respondent has failed to give effect to the first appeal order, within the time stipulated as per Rule 32 of the Tamil Nadu General Sales Tax Rules, 1959. Even though the appellate order was passed as early as on 09.08.1999, it was not given effect to. Aggrieved over the inaction of the respondent, the petitioner is before this Court for a direction to give effect to the order passed by the appellate authority.

4. The learned counsel for the petitioner, in support of his contention, would rely upon the orders passed by this Court in similar circumstances, dated 04.09.2014 in W.P.(MD)No.14672 of 2014 [Kwality Plastic vs. The Assistant Commissioner CT, Karur], dated 06.07.2017 in W.P.(MD)No.11260 of 2017 [M/s.Arasan Fertilizers (P) Ltd., vs. The Commercial Tax Officer, Ettayapuram, Tuticorin], and dated 18.07.2017 in W.P.(MD)No.13187 of 2017 [M/s.L.G.Shenbagarajan vs. The Assistant Commissioner (CT), Theni].

5. Following the orders passed by this Court as referred to above, this Court is also inclined to grant the reliefs as prayed for by the petitioner in the present Writ Petition. Accordingly, the respondent is directed to give effect to the order of the Appellate Assistant Commissioner (CT), Madurai (North), passed in Appeal No.& Year 117/98, dated 09.08.1999, by passing a revised order and refund the amount of taxes paid in excess along with interest due thereon to the petitioner in accordance with law, if there are no legal impediments, within a period of four weeks from the date of receipt of a copy of this order, failing which, the respondent will have to pay interest for the delayed payment.

6. The Writ Petition is, accordingly, ordered. No costs.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To
The Commercial Tax Officer-V,
Presently Designated as
The Assistant Commissioner (ST)-V,
Dindigul.

+1cc to M/S.R.D.Ganesan, Advocate SR.No. 70585

Order made in
W.P(MD)No.14063 of 2018
Dated: 02.07.2018

sml
JM/RP/SAR 4/17.07.2018/3P/3C