BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.07.2018
CORAM
THE HON'BLE MR.JUSTICE M.GOVINDARAJ
W.P.(MD)No.15500 to 15502 of 2018

M/s.Mekala MSP Raja,
Represented by its Proprietrix Mrs.Mekala,
No.281-A, Goodshed Street,
Madurai. ... Petitioner in all W.Ps

-Vs-

The Assistant Commissioner (CT),
Nethaji Road Assessment Circle,
Madurai-20. ... Respondent in all W.Ps

Common Prayer: Writ Petitions - filed under Article 226 of Constitution of India, to issue a Writ of Mandamus directing the respondent to issue refund voucher for the amount of tax paid in excess as per the order & Form P in TIN No.33534980556/2013-2014, 2014-2015, 2015-2016 dated 13.04.2018 along with interest due as contemplated under Section 42(5) of the Tamil Nadu Value Added Tax Act, 2006 read with Rule 11(1) of the Tamil Nadu Value Added Tax Rules, 2007.

For Petitioner : Mr.R.D.Ganesan
For Respondent : Mr.A.Muthu Karuppan
Additional Government Pleader
(in all W.Ps)

COMMON ORDER

The petitioner has come forward with the present Writ Petitions seeking for issuance of a Writ of Mandamus, directing the respondent to refund voucher for the amount of tax paid in excess as per the order & Form P in TIN No.33534980556/2013-2014, 2014-2015, 2015-2016 dated 13.04.2018 along with interest due as contemplated under Section 42(5) of the Tamil Nadu Value Added Tax Act, 2006 read with Rule 11(1) of the Tamil Nadu Value Added Tax Rules, 2007.

2. Mr.A.Muthu Karuppan, learned Additional Government Pleader, takes notice on behalf of the respondent.

3. The learned counsel appearing for the petitioner would submit that in a similar case, this Court, in W.P.(MD)No.2913 of 2004 dated 01.11.2004, directed the respondent to give refund due to the petitioner and in W.P.(MD)No.9909 of 2018 dated 27.04.2018, directed the respondent to give effect the refund due to the petitioner.

4. The learned Additional Government Pleader appearing for the respondent would submit that the respondent has filed an appeal before the appellate authority and therefore, the issue has not obtained finality. Hence, the refund of money does not arise.

5. I have considered the submissions on both sides.

6. Admittedly, the amount is lying with the respondent and the petitioner is entitled to get refund of the amount. Mere pendency of the appeal cannot be a ground for refusing the refund. It is well settled by various decisions of this Court that as long as the order of the tribunal is in force and not being stayed, it is incumbent on the Department to refund that amount. In a similar circumstances, this Court has passed orders in W.P.(MD)No.2913 of 2004 dated 01.11.2004, which reads as under:

> *"Having regard to the facts and circumstances of the case, it is directed that if the order in AP.No.91 of 2002 dated 20.12.2002 has not been stayed in an appropriate proceedings, the refund in question along with interest as contemplated under law should be made to the petitioner within a period of four weeks from the date of receipt of copy of this order. This writ petition is accordingly disposed of. No costs. Consequently, connected WMP is closed."*

7. I am also inclined to follow that order and direct the respondent to refund the amount along with interest as contemplated under law, within a period of four weeks from the date of receipt of a copy of this order.

8. With the above direction, the Writ Petitions are disposed of. No costs.

Sd/-
Assistant Registrar (Crl. side)

/True Copy/

Sub Assistant Registrar(CS-III)

To
The Assistant Commissioner (CT),
Nethaji Road Assessment Circle,
Madurai-20.
+3cc to Mr.R.D.Ganesan, Advocate SR.No.74872,74873,74874
Sm
MK/SKN/SAR 3/29.08.2018/2P/5C