BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) Nos.16841 and 16842 of 2018

W.P.(MD)No. 16841 of 2018:
M/s.Pandian Lodge Deluxe,
Represented by its Proprietor,
Lenin Pandian ... Petitioner

Vs.

The Assistant Commissioner (CT),
Tenkasi-(C), Tenkasi,
Tirunelveli District. ...Respondent

PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondent to issue refund voucher for the amount of tax paid in excess as per the order & Form V-A in TNLH No.14045/2014-2015 dated 05.12.2017 as contemplated under Section 13(2) of the Tamil Nadu Tax on Luxuries Act, 1981.

W.P.(MD) No.16842 of 2018

M/s.Pandian Lodge Deluxe,
Represented by its Proprietor,
Lenin Pandian ... Petitioner

Vs.

The Assistant Commissioner (CT),
Tenkasi-(C), Tenkasi,
Tirunelveli District. ...Respondent

PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondent to issue refund voucher for the amount of tax paid in excess as per the order & Form V-A in TNLH No.14045/2015-2016 dated 17.08.2017 as contemplated under Section 13(2) of the Tamil Nadu Tax on Luxuries Act, 1981.

For Petitioner : Mr.R.D.Ganesan
(In both petitions)
For Respondent : Mr.B.Bhagavathi,
(In both petitions) Government Advocate

ORDER

The petitioner is running a Hotel business and for the assessment year 2014-2015 and 2015-2016 the respondent has determined the total and taxable turnover of Rs.7,83,110/- and Rs.4,85,200/- respectively vide her orders in TNLH No.14045/2014-2015 dated 05.12.2017 and TNLH No.14045/ 2015-2016 dated 17.08.2017.

2. Against the assessment orders, the petitioner has filed appeals before the Appellate Deputy Commissioner (CT) Tiruneveli in LH A.P.NO.6/2016 dated 13.07.2017 and LH A.P. No.1/2017 dated 12.07.2017. In view of the revised order, the petitioner claimed that he is entitled to refund of excess amount already remitted during pendency of the appeals. As per Section 13(2) of Tamilnadu Luxuries Act, 1981, the Assessing Authoirty shall refund a excess amount pursuant to the order of revision passed by the appellate authority.

3. The learned counsel for the petitioner would submit that there is no arrears of tax due and payable to the respondent. Therefore, the respondent is bound to give voucher to claim the arrears. Even though more than 7 months has lapsed, the respondent has not issued any voucher for refund of amount. Aggrieved over the same, the petitioner is before this Court.

4. Heard both sides.

5. In a similar circumstances, this Court in W.P.(MD) No.2913 of 2004 (In M/s. Essae Teraoka Ltd., Vs. the Deputy Commissioner Tax Officers, Madurai) by order dated 1.11.2014, directed to refund the amount along with interest.

6. Following the same, this Court directs as follows:

Having regard to the facts and circumstances of the case, it is directed that if the orders in order & Form V-A in TNLH No.14045/2014-2015 and 2015-2016 have 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.

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

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-I)

To

The Assistant Commissioner (CT),
Tenkasi-(C), Tenkasi,
Tirunelveli District.

+2CCs TO MR.R.D.GANESAN ADVOCATE IN SR.NO.75955,75956.

+1CC TO SPECIAL GOVERNMENT PLEADER IN S.R.NO.76203.

CM
DS SKN SAR-1 :10.09.2018: 3P/5C

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31.07.2018