IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.6907 of 2019

M/s. A.R. Bachawat Trading (P) Limited,
Represented by Dinesh,
Manager
27/5, Eruluppan Street, Sowcarpet,
Chennai - 79. ...Petitioner

Vs.

1.The Commercial Tax Officer,
Peddunaickenpet Assessment Circle,
Chennai.

2.The State Tax Officer,
Peddunaickenpet Assessment Circle,
48/39, Rajaji Salai,
Wavoo Mansion, Chennai. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the 2nd respondent to grant refund of tax and also interest from the expiry of 90 days from the date of order of the 1st Appellate Authority (i.e) 90 days from 28.07.2014, as per the principles stated by the Madras High Court in 31 VST 312 (Medi Herbs Vs. Commercial Tax Officer, Cuddalore and others).

For Petitioner : Mr.V.Srikanth

For Respondents: Ms.G.Dhana Madhri
Government Advocate

O R D E R

Mr.V.Srikanth, learned counsel on record for writ petitioner and Ms.G.Dhana Madhri, learned Government Advocate appearing on behalf of both the respondents are before this Court.

2. With consent of learned counsel on both sides, main writ petition itself is taken up and heard out and is being disposed of.

3. Subject matter of instant writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', hereinafter, TNVAT Act for brevity.

4. Considering the narrow point on which instant writ petition turns short facts shorn of elaboration would suffice. Short facts are that writ petitioner is a dealer within the meaning of TNVAT Act, that an assessment order dated 15.03.2013 came to be passed against writ petitioner pertaining to the assessment year 2010-2011 by the Assessing Officer, this was carried in appeal by the writ petitioner by way of a regular statutory appeal under Section 51 of TNVAT Act in A.P.VAT.No.51/2013 before the Appellate Authority, Appellate Authority by order dated 28.07.2014 allowed the appeal in favour of the writ petitioner dealer, Revenue carried the matter in appeal to the Tribunal i.e., 'Tamil Nadu Sales Tax Appelate Tribunal' ('STAT' for brevity) being S.T.A.No.165 of 2015 which came to be dismissed after full contest in and by an order dated 24.08.2015. There is no disputation or disagreement before this Court that order dated 24.08.2015 in STA.No.165 of 2015, which was passed after full contest has been given legal quietus or in other words has attained legal finality.

5. What is of utmost significance is, pursuant to the aforesaid order of STAT, in accordance with Rule 14 [22] of the 'Tamil Nadu Value Added Tax Rules', 2007 ('TNVAT Rules' for brevity) and other allied provisions an order dated 22.09.2017 bearing reference TIN/33490281704/2010-11 with Form P thereto, which deals with the refund order (hereinafter 'said order' for brevity) came to be passed by the second respondent.

6. Learned counsel for writ petitioner adverting to Rule 14 [22] of Tamil Nadu Value Added Tax Rules, as well as Section 42 (5) of the TNVAT Act, 2006 submits that writ petitioner, who had succeeded in the appeal before the Appellate Authority nearly half a decade ago (28.07.2011 to be precise) has not been able to see the colour of the coin by getting refund inspite of 'said order' (to be noted 'said order' is together with Form P) being passed.

7. Learned Revenue counsel submitted that the order of Appellate Authority was carried in appeal to the Tribunal i.e., STAT and therefore, the proceedings have taken the usual trajectory. However, the appeal before STAT also came to be dismissed on 24.08.2015 itself. More importantly, said order has been passed on 22.09.2017 itself and the writ petitioner has

sent a detailed representation dated 09.01.2018. It is the specific case of writ petitioner that representation dated 09.01.2018 has neither evoked a reply nor a response.

8. In sum totality of circumstances, it comes out clearly that the writ petitioner is entitled to refund, as per said order, more so, as there is no disputation or disagreement that the aforementioned STAT order has been given legal quietus, the refund will obviously be in accordance with Section 42(5) of TNVAT Act and Rule 14[22] of Tamil Nadu Value Added Tax Rules. To be noted, a perusal of Section 42(5) reveals that there is provision for refund along with interest in the manner adumbrated there under.

9. The process of refund as per said order albeit post adjustment if any, in accordance with aforemention provisions shall be made within a period of eight weeks from the date of receipt of a copy of this order.

10. The Writ Petition stands disposed of with the above directions. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

sni

To

1.The Commercial Tax Officer,
Peddunaickenpet Assessment Circle,
Chennai.

2.The State Tax Officer,
Peddunaickenpet Assessment Circle,
48/39, Rajaji Salai,
Wavoo Mansion, Chennai.

+1cc to Mr.V.Srikanth Advocate, S.R.No. 70816
+1cc to the Special Government Pleader(Taxes), S.R.No.71566

VBA(CO)
CB(20/09/2019)