BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.02.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.2643 of 2021

Tvl.Coral Apparels,
Rep. by its Proprietrix: B.Hameedha Parveen,
Plot No.16/C, 2nd Floor,
TNHB Colony, Villapuram,
Madurai. ... Petitioner

Vs.

The Assistant Commissioner(ST),
Jaihindpuram Circle,
Madurai – 20. ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent herein TIN:33714842135/2013-14 dated 24.10.2020 and quash the same as illegal, invalid and unsustainable and further direct the respondent to issue Refund Voucher to enable the petitioner to get refund of the excess tax Rs.4,36,157/- paid by them for the assessment year 2013-14 pursuant to the proceedings of the petitioner's then assessing officer, The Assistant Commissioner(CT), Thiruparankundram Circle Madurai in TIN: 33714842135/2013-14 dated Nil, signed on 09.10.2015 and “Notice of Assessment and Refund Order” issued in FORM-P dated Nil, signed on 09.10.2015 as per Rule 14(18) of the Tamil Nadu Value Added Tax Rules, 2007 together with interest @ 6% per annum from 09.01.2016 till date of issue of the Refund Voucher as per Section 42(5) of Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.A.Chandrasekaran

For Respondents : Ms.J.Padmavathi Devi,
Special Government Pleader.

* * *

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent.

2. The petitioner is a dealer registered with the respondent. The case on hand pertains to the assessment year 2013-14. The petitioner filed his returns under Section 21 of Tamil Nadu Value Added Tax Act, 2006. The same was finalised on deemed assessment basis under Section 22(2) of the Act. Then the jurisdictional assessment authority passed a revised order on 31.07.2014 holding that there was sales suppression and that therefore, the petitioner was bound to pay further tax amount of Rs.6,09,982/- together with penalty. Aggrieved by the same, the petitioner filed an appeal before the appellate authority. The petitioner's appeal was partly allowed and the order passed by the assessing authority was modified. Then the jurisdictional assessing authority gave effect to the order passed by the appellate authority and the petitioner had paid the excess tax to the tune of Rs.4,36,157/-. He also passed refund order dated 09.10.2015 and the same has also been enclosed at page No.16 of the typed set of papers. Since the refund voucher was not enclosed along with the refund order, the petitioner submitted a representation in that regard. But no response was forthcoming. Finally, the petitioner has been informed by the impugned communication that the order passed by the appellate authority has been put to challenge before the sales tax appellate tribunal(Additional Bench), Madurai. In view of the pendency of the appeal, the respondent is unable to issue the refund voucher.

3. The learned Special Government Pleader appearing for the respondent reiterated the stand set out in the impugned order.

4. It is well settled that mere pendency of an appeal in not a ground to deny relief to the assessee. However, I am of the view that in the interest of justice, some breathing time can be given to the respondent. Therefore, it is for the respondent to make a mention and move the Tribunal and obtain an interim order within a period of four weeks from the date of receipt of a copy of this order. If the respondent does not obtain any interim relief from the Tribunal in the pending appeal(MTSA No.177 of 2017), then the respondent will have to necessarily issue the refund voucher with statutory interest. This exercise will be done by the respondent within a period of six weeks thereafter.

5.This writ petition stands disposed of on these terms. No costs.

Sd/-
Assistant Registrar (CS-II)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

PMU

To:
The Assistant Commissioner(ST),
Jaihindpuram Circle,
Madurai - 20.

+1 CC to M/s.A.CHANDRASEKARAN, Advocate (SR-7878[F] dated 01/03/2021)

+1 CC to M/s.SPL GP (SR-7902[F] dated 01/03/2021)

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