BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.3838, 3840 & 3841 of 2021

M/s.A.R.A.S.Enterprises (P) Ltd.,
Rep. by its Director K.Suresh,
No.35/1, Samayanallur Main Road,
Vilangudi, Madurai. ... Petitioner in all petitions

Vs.

1. The Assistant Commissioner (ST),
West Veli Street Assessment Circle,
Madurai.

2. The Commissioner of Commercial Taxes,
State Tax Department, Ezhilagam,
Chepauk, Chennai - 600 005.
(R-2 is suo motu impleaded
vide Order dated 01.03.2021
in W.P.(MD)Nos.3838, 3840 & 3841 of 2021)
... Respondents in all petitions

Prayer in W.P.(MD)No.3838 of 2021: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to issue refund voucher for the amount of tax paid in excess as per order in TIN No.33724982149/2009-2010 dated 21.01.2020 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.

Prayer in W.P.(MD)No.3840 of 2021: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to issue refund voucher for the amount of tax paid in excess as per order in TIN No.33724982149/2011-2012 dated 10.11.2020 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.

Prayer in W.P.(MD)No.3841 of 2021: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to issue refund voucher for the amount of tax paid in excess as per order in TIN No.33724982149/2012-2013 dated 12.08.2020 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.

(in all W.Ps.)
For Petitioner : Mr.A.Satheesh Murugan, for Mr.R.D.Ganesan.

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

* * *

COMMON ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Special Government Pleader appearing for the assessing authority.

2. The assessee has filed these three writ petitions seeking refund in respect of each assessment years, namely, 2009-10, 2011-12 and 2012-13. The petitioner had suffered adverse orders earlier. He therefore filed W.P.(MD)Nos.9130 to 9133 of 2015. The writ petitions were allowed and the matters were remitted to the file of the assessing authority. The assessing authority chose to keep the issue of mismatch pending in terms of the Circular No.3 of 2019 dated 18.01.2019 issued by the Commissioner of Taxes. The other issues were dealt with. The assessing authority came to the conclusion that the petitioner had paid the excess tax and that therefore, refund was due to the petitioner herein. Even though the orders were passed as early as on 21.01.2020, refund vouchers were not issued. The petitioner therefore submitted a letter dated 30.11.2020 in this regard. Since it was not acted upon, these writ petitions came to be filed.

3. When the matter was taken up for hearing, the learned Special Government Pleader informed the Court that the Commissioner of Taxes has issued revised Circular No.5 of 2021 dated 24.02.2021 and that the issue regarding mismatch is going to be adjudicated shortly. It appears that personal hearing has also been granted to the assessee. She therefore wanted this Court to not to pass any direction for refund. Since the rights of the petitioner will have to abide by the orders to be passed on the mismatch issue, proper adjustment can be made thereafter.

4. I am not impressed with the said request. As rightly pointed out by the learned counsel appearing for the petitioner, as on date the excess tax amount remitted by the petitioner is lying with the department. Therefore, the assessing authority is bound to refund the said excess amount. As and when mismatch issue is finalised, if the petitioner is liable, of course the petitioner will have to necessarily clear such liability. But in respect of the liability that may arise in future, the refund due to the petitioner at present cannot be deferred. The respondents are directed to issue refund vouchers in terms of the petition mentioned assessment orders together with interest at the rate of 6% p.a. to be paid from the entitlement till the date of refund. This exercise shall be concluded within a period of four weeks from the date of receipt of a copy of this order.

5. This writ petition stands allowed. No costs.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

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.

To:

1. The Assistant Commissioner (ST),
   West Veli Street Assessment Circle, Madurai.

2. The Commissioner of Commercial Taxes,
   State Tax Department, Ezhilagam,
   Chepauk, Chennai - 600 005.

+1 CC to M/s.SPL GP (SR-14101[F] dated 29/03/2021)
+3 CC to M/s.R.D.GANESAN, Advocate (SR-14213[F] dated 29/03/2021)

W.P.(MD)Nos.3838, 3840 & 3841 of 2021
25.03.2021

ES(CO)
TR(23.04.2021) 3P 7C