ORDER SHEET
WPO/1347/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

JAGDAMBA TMT MILLS LIMITED
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 27th July, 2023.

Appearance:
Mr. Pranit Bag, Adv.
Mr. Anuj Kumar Mishra, Adv.
Mr. Rhiddhiman Mukherjee, Adv.
Mr. Balaram Patra, Adv.
...For the Petitioner
Mr. Soumen Bhattacharjee, Adv.
...For the Respondents

The Court: Heard learned advocates appearing for the parties.

Affidavit of service filed in Court be kept with the records.

By this writ petition, petitioner has made prayer for relief of direction upon the respondent Income Tax Authority concerned to refund the admitted refundable amount totaling Rs. 26,50,370/- relating to assessment years 2020-21, 2021-22 and 2022-23. Petitioner submits that respondent Income Tax Authority instead of refunding the admitted refundable amount, has adjusted the same with tax demand relating to assessment year 2014-15 relating to which already there was an order of stay of the demand by the department after making payment of 20% of the demand during the pendency of the appeal relating to assessment year 2014-15 against which appeal is still pending.

Mr. Bhattacharjee, learned advocate vehemently opposes this writ petition by contending that no formal stay of demand relating to assessment year 2014-15 was in existence when the order dated 5th December, 2022 in WPO 3046 of 2022 was passed.

It appears from the order of the assessing officer itself dated 6th January, 202,3 relating to assessment year 2014-15 that contradictory recording has been made by the assessing officer in the said order. In the concluding paragraph of the order assessing officer has recorded that he has granted stay of recovery of demand in respect of said assessment order till the disposal of the appeal while in earlier paragraph he has recorded that he has adjusted the aforesaid demand from the other assessment years namely 2020-21, 2021-22 and 2022-23 in excess of 20% of the demand which is required to be paid by the petitioner as per relevant circular of the Board.

Considering the facts and circumstances of the case as appears from record and submissions of the parties, I am of the considered view that when the petitioner has already paid 20% of the demand of Rs. 72,93,516/- relating to assessment year 2014-15 and the balance demand has been stayed till the disposal of the appeal against the said assessment order, in that event respondent Income Tax Authority is not entitled under the law to recover the balance amount of the demand arising out of the assessment order relating to assessment year 2014-15 by adjusting from admitted refundable amount from other assessment years namely 2020-21, 2021-22 and 2022-23. In view of the order of the assessing officer dated 6th January, 2023 relating to assessment year 2014-15 where the assessing officer himself has recorded that stay has been granted against recovery of the demand for assessment year 2014-15 till the disposal of the appeal, he shall verify from record as to whether 20% of the total demand in respect of the assessment year 2014-15 has been paid by the petitioner or not and if it is found that petitioner has already paid 20% of the demand in respect of the assessment year 2014-15, in that event respondent Income Tax Authority under the law will not be entitled to make any adjustment from the admitted refund in respect of the assessment years 2020-21, 2021-22 and 2022-23 and shall refund the amount in excess of 20% to the petitioner with statutory interest after the aforesaid verification, within four weeks from the date of communication of this order.

With these observations and directions, this writ petition being WPO 1347 of 2023 stands disposed of.

(MD. NIZAMUDDIN, J.)

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