IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.6690 of 2023

M/s.Kawarlal & co.
No.27, Raghynayakulu Street,
Chennai - 600 03.01.2023
By its Proprietor K.Ramlal Jain ... Petitioner

vs.

1.The State Tax Officer,
Group 2, Intelligence I,
Commercial Tax Office, Greams Road,
Chennai - 600 006.

2.Deputy State Tax Officer,
Collection and Arrear, Inspection I,
Intelligence I, Commercial Tax Office,
Greams Road, Chennai - 600 006. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for writ of Mandamus directing the respondents herein to repay/refund the excess tax of Rs.11,43,930/- paid by considering the petitioner's representation dated 16.02.2023.

For Petitioner : Mr.S.Baskaran

For Respondents : Mr.C.Prasanth Kiran,
Government Advocate

ORDER

This writ petition has been filed for a mandamus seeking for a direction to the respondents to refund the alleged excess tax paid by the petitioner amounting to Rs.11,43,930/- based on the petitioner's representation dated 16.02.2023, within a time frame to be fixed by this Court.

2. Mr.V.Prasanth Kiran, learned Government Advocate accepts notice on behalf of the respondents. By consent of both the parties, this writ petition is taken up for final disposal in the admission stage itself.

3. Heard Mr.S.Baskaran, learned counsel for the petitioner and Mr.V.Prasanth Kiran, learned Government Advocate appearing for the respondents.

4. Admittedly, a search was conducted as per the provisions of GST Act, 2017 on the petitioner. The petitioner claims that while search was in progress, the petitioner was forced to pay a sum of Rs.11,43,930/- as excess tax under protest. The petitioner claims that as per the circular issued by the

GST-Investigation Wing dated 25.05.2022 in Instruction No.01/2022-23, under no circumstances, during the course of search or inspection or investigation proceedings, an assessee can be forced to pay tax. The petitioner also relies upon the Division Bench Judgment of the Gujarat High Court in the case of Bhumi Associate vs. Union of India reported in 2021 (46) G.S.T.L. 36 (Gujarat) for the purpose of substantiating their case that no recovery in any mode by cheque, cash, e-payment or adjustment of input tax credit should be made at the time of the search/inspection proceedings.

5. This Court is not expressing any opinion on the merits of the petitioner's contentions. However, no prejudice would be caused to the respondents, if the petitioner's representation as stated supra is considered on merits and in accordance with law within a time frame to be fixed by this Court, after giving due consideration to the aforementioned circular as well as the Division Bench Judgment of the Gujarat High Court. It is for the respondents to decide as to whether the circular relied upon by the petitioner as well as the Division Bench Judgment of the Gujarat High Court has any bearing for the petitioner's case or not.

6. For the foregoing reasons, this Court directs the first respondent to

pass final orders on merits and in accordance with law on the petitioner's representation dated 16.02.2023 seeking for refund of the alleged excess tax paid by them amounting to Rs.11,43,930/-, after giving due consideration to the circular dated 25.05.2022 issued by the GST-Investigation Wing, vide Instruction No.01/2022-23 as well as the Division Bench Judgment of the Gujarat High Court in the case of Bhumi Associate vs. Union of India reported in 2021 (46) G.S.T.L. 36 (Guj.) within a period of eight weeks from the date of receipt of a copy of this Order. The petitioner is directed to send a copy of the aforementioned Gujarat High Court Judgment to the respondents immediately on receipt of a copy of this Order. No costs.

02.03.2023

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Index : Yes/No
Speaking/Non speaking orders
Neutral citations : Yes/No

To

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Chennai - 600 006.

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Collection and Arrear, Inspection I,
Intelligence I, Commercial Tax Office,
Greams Road, Chennai - 600 006.

ABDUL QUDDHOSE, J.

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