IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26876 of 2023

Tmt.M.Rajalakshmi ... Petitioner

Vs

1.The Principal Commissioner and
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 5.

2.The State Tax Officer/Commercial Tax Officer,
Pollachi West Assessment Circle,
8, Palakkad Road,
Pollachi. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the second respondent to refund the excess amount of Rs.8,92,193/- by issuing refund voucher by considering his representation dated 20.03.2023 and 16.05.2023 and also directing the second respondent to make the payment of interest of Rs.26,766/- upto 14.08.2023 on the above amount as per Section 42(5) of the TNVAT Act.

For Petitioner : Mr.S.Ramanathan

For Respondents : Mr.C.Harsharaj
Additional Government Pleader

ORDER

Mr.C.Harsharaj, learned Additional Government Pleader takes notice on behalf of the respondents.

2. The petitioner has filed this writ petition for a mandamus to direct the second respondent to refund the amounts pursuant to giving effect, orders have been issued by the second respondent on 14.11.2022. The second respondent has also issued the refund order for each Assessment years. The petitioner appears to have sent a representations to the first and second respondents. The first respondent by a communication dated 30.05.2023, has also instructed the Joint Commissioner to consider the petitioner's representation for refund of the amount.

3. The petitioner has stated that as against the order of the Appellate Deputy Commissioner (ST)(FAC) Appeals, Coimbatore dated 30.09.2022, an appeal has been filed before the Sales Tax Appellate Tribunal (Additional Branch), Coimbatore in CTSA No.9 to 13 of 2023.

4. The learned counsel for the petitioner would submit that under similar circumstances, this Court has directed to refund of the amounts in the case of ***Senthil Raja Metal*** Vs. ***Commercial Tax Officer, South Avani Moola Street Circle, Madurai*** reported in Vol 79 [1990] STC 38.

5. The learned Additional Government Pleader for the respondents submitted that in view of the pendency of the Appeals in CTSA No.9 to 13 of 2023. The refund cannot be processed.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

7. Almost a year has been lapsed, since the order was passed by the Appellate Deputy Commissioner (ST)(FAC) Appeals, Coimbatore on 30.09.2022 giving effect order by the second respondent on 14.11.2022.

8. The respondents ought to have obtained a stay of operation of the aforesaid order by this time in their Appeal before the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore in CTSA No.9 to 13 of 2023. Mere pendency of the Appeal is not sufficient. In this connection, a reference is made to the decision of the Hon'ble Supreme Court in the case of **Union of India** Vs **Kamlakshi Finance Corporation Limited**, 1991 (55) E.L.T 433 (S.C.)

9. Be that as it may, considering the fact that writ petition is filed only for a mandamus to direct the respondents to consider the petitioner's various representations and considering the fact that the respondents have also executed the issue before the Sales Tax Appellate Tribunal (Additional Bench) Coimbatore in CTSA No.9 to 13 of 2013, I direct the second respondent to dispose of the petitioner's representation for refund of the amounts pursuant to giving effect order dated 14.11.2022, for the

Assessment years 2008 – 2009 to 2012 – 2013, within a period of six weeks from the date of receipt of a copy of this order.

10. Meanwhile, it is open for the respondents to process for any interim relief before the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore as against the order of the Appellate Deputy Commissioner (ST)(FAC) Appeals, Coimbatore dated 30.09.2022.

11. This writ petition stands disposed of. No costs.

13.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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To

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Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
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2.The State Tax Officer/Commercial Tax Officer,
Pollachi West Assessment Circle,
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C.SARAVANAN, J.

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