BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2023

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Cont.P.(MD)Nos.1129 and 1130 of 2020

M/s.Mahalakshmi Timber Mart,
Rep. by its Proprietor Mr.K.Jivraj Patel,
Old No.33/10, New No.249/10,
Ramayanpatti, Palani Road,
Dindigul - 624 002. ... Petitioner in both petitions

Vs.

M.Rajesh Prabhu,
The State Tax Officer,
Dindigul (Rural) Assessment Circle,
Dindigul. ...Contemnor in both petitions

Common Prayer: Contempt Petitions filed under Section 11 of the Contempt of Courts Act, 1971 to punish the respondent for contempt of orders passed by the Court in W.P.(MD)Nos.7172 and 7192 of 2020 dated 02.07.2020 by detaining the respondent in Civil Prison.

In both petitions,

For Petitioners : Mr.A.Satheesh Murugan

For Respondent : Mr.M.Siddharthan,
Additional Government Pleader

COMMON ORDER

The petitioner has filed this contempt petition against alleged non-compliance of the order dated 02.07.2020 in W.P.(MD)Nos.7172 and 7192 of 2020.

2. The operative portion of the order reads as follows.

> *"3. The Writ Petitions are filed for implementation of the appeal order passed by the first Appellate authority on 20.06.2019 in A.P.83 of 2019 (TNVAT)for the year 2017-18 and on 30.08.2019 in A.P.82 of 2019 (TNVAT)for the year 2016-17.*

> *4. I am of the view that to meet the ends of Justice, the respondent can be directed to pass appropriate orders in terms of 14(18) of the TNVAT Rules, 2006 such order shall be passed within a period of Four Weeks from the date of receipt of copy of the order on merits and in accordance with law."*

3. It is the specific case of the petitioner that though Appeal orders were passed on 20.06.2019 and 30.08.2019, the respondent failed to refund the amount within the period stipulated under Rule 14 (8) of the TNVAT Rules, 2007, which reads as under.

> *"Every order passed on appeal, revision or review shall be given effect to by the assessing authority who shall refund without interest within a period of ninety days from the date of order giving effect to such order passed in appeal, revision or review, any excess tax found to have been collected. For the said purpose, the assessing authority shall serve upon the dealer a notice in Form P notifying*

the dealer of the adjustment of excess tax towards arrears, if any, or if there are no arrears of tax due under the Act from the dealer or if after such adjustment there is still an excess, the assessing authority shall refund the amount of the excess tax and along with such notice, he shall also send to the dealer a voucher for claiming refund of that amount without interest from the treasury. If any amount is found to be due from the dealer, the assessing authority shall serve upon the dealer a notice in Form O and the dealer shall pay the sum demanded in the manner specified in the notice."

4. The respondent on the other hand has filed an affidavit, wherein, it is stated that he has complied with the order by refunding the amount on 08.12.2020. The relevant portion of the counter of the respondent is extracted under.

"2) I submit that M/s. Mahalakshmi Timber Mart the petitioner in this case is a registered

dealer in Dindigul Rural Circle under the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act herein) have been doing business at Dindigul. I state that assessment orders under TNVAT Act had been passed for the years 2016-17 and 2017-18 on 27.03.2019 and 28.03.2019 respectively. Aggrieved against the orders the petitioner had preferred first appeal before the Appellate Deputy Commissioner (ST), Madurai (North) in Appeal Nos. 82 and 83 of 2019 (VAT) for the years 2016-17 and 2017-18. The appeals were Partly Allowed and Partly Remanded for the year 2016-17 on 30.08.2019 and Partly Allowed and Partly Modified on 20.06.2019 for the year 2017-18. The Order copies were received from the petitioner on 17 July 2020. In the meantime the petitioner had also preferred Writ Petition in W.P(MD) Nos.7172 & 7192 of 2020 and were ordered on 02 July 2020 directing the State Tax Officer to pass appropriate orders in terms of Rule 14(18) of the TNVAT Rules, 2007 and such order shall be passed within a period of Four weeks from the date of receipt of copy of *the order on merits and in accordance with law. The Order copy was duly received on 17 July 2020 and Personal hearing notice was served to the dealer for the year 2016-17 on 04.08.2020 to file their records for the Remanded portion. The Dealer submitted their ledger extract only on 14 October 2020 and Revision order for the year 2016-17 were passed on 15 October 2020 after adjustment of tax due of Rs.6,205/- and resulting in excess tax paid of Rs.83,795/- for which Refund voucher were immediately generated. Also, Revision Orders were passed for the year 2017-18 on 04.08.2020 resulting in excess tax paid of Rs.10,55,000/- and as the refund amount exceeds Rupees One Lakhs prior approval were sought from the Deputy Commissioner (ST), Dindigul.*

3) I submit that Section 42(5) of the TNVAT Act, 2006 read with Rule 14(18) of the TNVAT Rules, 2007 implies that any excess tax collected shall be refunded to the dealer after adjustment of tax within a period of ninety days *from the date of order giving effect to such order passed in appeal, revision and review. I also submit that Rule 14(22) of the TNVAT Rules have stated the condition of returning without Interest any excess tax collected within three weeks from the date of communication of the authorization. In the meantime, the Deputy Commissioner had notified the Internal Audit Defects and Accountant General Paras which were long served notices and replies were not received for more than a year which are essential in determining the adjustment of tax due in the excess tax paid. The petitioner had subsequently submitted their replies and Certificates for Industrial Inputs received from buyers for the years 2016-17 and 2017-18 for purchasing goods at the rate of tax of 14.5% and selling goods packing material at the rate of tax of 5% On finalization of these proceedings approval were granted by the Deputy Commissioner on 08.12.2020 and voucher was generated for the amount of Rs. 10,55,000/-."*

5. The respondent thus repaid only the tax that was collected in excess. However, the respondent had not paid interest that is due to the petitioner on account of the delayed payment. The petitioner is entitled for interest in terms of Section 42 (5) of the TNVAT Act, 2006 when there is a delay in payment of the amount. After reading of the documents filed, Section 42(5) of the TNVAT Act, 2006 and Rule 14(18) of TNVAT Rules, 2007, which have been extracted above, it cannot be said that the respondent has committed contempt of this Court's order. The order that was passed by this Court merely directs the respondent to pass appropriate order under Rule 14(18) of TNVAT Rules. The interest, if any, on account of the delayed payment has to be worked out separately by the petitioner in accordance with law. Consequently, the Contempt Petitions are closed. However, liberty is granted to the petitioner to workout his remedy in accordance with law under Section 42 (5) of the TNVAT Act, 2006.

18.04.2023

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order
mbi

C.SARAVANAN, J.

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