IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.No.2977 of 2024
and
C.M.P.No.22362 of 2024

The Assistant Commissioner (ST),
Broadway Assessment Circle,
No.32, Room No.304,
Integrated Commercial Tax Complex,
Elephant Gate Bridge Road,
Chennai - 600 003. ... Appellant

-Vs-

Tvl.Salem Steel Suppliers,
Represented by its Partner
Mr.Suresh K.Jain,
No.12/1, Mooker Nallamuthu Street,
Parrys,
Chennai - 1. ... Respondent

PRAYER : Appeal filed under Clause 15 of Letters Patent, to set aside the order in W.P.No.25647 of 2022 dated 29.09.2022.

For Appellant : Mr.G.Nanmaran
Special Government Pleader

For Respondent : Mr.P.Rajkumar

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.)**

This intra Court appeal has been directed against the order passed by the writ Court dated 29.09.2022 made in W.P.No.25647 of 2022.

2. It is submitted by Mr.G.Nanmaran, learned Special Government Pleader appearing for the appellant that, though the issue raised in this appeal is covered by a decision of number of writ appeals which have already been disposed by a Co-ordinate Bench of this Court and also by the present Bench in W.A.Nos.2161 of 2024 etc., batch dated 12.08.2024 in the matter of ***The Assistant Commissioner, Royapettah Assessment Circle Vs. Tvl.SREI Equipment Finance Pvt. Ltd,*** the learned Special Government Pleader would contend that, the issue is still pending before the Hon'ble Supreme Court in S.L.P.(Civil) Diary No.5815 of 2023 and S.L.P.(Civil) Diary No.6031 of 2024.

3. However, Mr.P.Rajkumar, learned counsel appearing for the respondent / assessee would contend that, the connected appeals were disposed in view of the earlier orders passed by the Co-ordinate Bench, against which, even though Special Leave Petitions have been filed by the State, in those cases,

only refund alone has been stayed, but in the case on hand, such a question of refund does not arise as the respondent assessee has not paid the tax.

4. We have considered the said submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

5. Recently on 12.08.2024, we have passed an order in the similar circumstances in the matter of ***The Assistant Commissioner, Royapettah Assessment Circle Vs. Tvl.SREI Equipment Finance Pvt. Ltd,*** where we have stated the following:

> "*2. The main issue which was concluded by a Division Bench judgment dated 31.03.2022 made in W.A.Nos.1260 of 2017 etc., batch dated 31.03.2022 (The State of Tamil Nadu, rep.by its Secretary, Commercial Taxes Department, and another -vs- M/s.Everest Industries Limited) has been appealed before the Hon'ble Supreme Court in S.L.P.(Civil) Diary No.5815 of 2023 and the Hon'ble Supreme Court, by an order dated 25.07.2023 issued notice at the condone delay stage and granted stay of refund alone pursuant to the order of the High Court until further orders.*
>
> *3. Following the same, the aforesaid two orders were*

passed by the Co-ordinate Benches of this Court. In the first order in W.A.Nos.1673, 1950 and 1617 of 2024 dated 12.06.2024, the following order was passed:

> *"4. These writ appeals are disposed of in the light of the decision in W.A.No.1260 of 2017 etc., batch dated 31.03.2022. The grant of refund shall be considered by the appellants based on the decision to be rendered by the Apex Court."*

4. In the second order in W.A.No.2248 of 2024 dated 26.07.2024, the following order was passed:

> *"4. Hence, this writ appeal is also **disposed of** in terms of the order dated 31.03.2022 in W.A.No.1260/2017. No costs. However, the grant of refund shall be considered by the appellants based on the decision to be rendered by the Hon'ble Supreme Court in SLP (Civil) Diary No.6031/2024. Consequently, connected miscellaneous petition is closed."*

5. In view of the said orders, we are inclined to dispose of these Writ Appeals also in terms of the said orders. Therefore, the grant of refund can be considered by the appellant based on the decision to be rendered by the Hon'ble Supreme Court in SLP (Civil) Diary No.5815/2023 and SLP (Civil) Diary No.6031/2024. No costs. Consequently, connected miscellaneous petitions are closed."

6. Since the issue has already been concluded in this Court and though SLP is pending before the Hon'ble Supreme Court where only refund has been stayed, herein the case on hand as stated by the learned counsel for the respondent, there is no need of refund to be made by the appellant / Revenue as the respondent assessee has not paid any tax.

7. In that view of the matter, we are inclined to dispose this appeal in terms of the order extracted hereinabove. However, insofar as the order passed in the said case with regard to the refund is concerned, since the tax has not been paid by the respondent assessee, there is no order necessitated in this case with regard to the refund.

8. With these observations, this Writ Appeal is ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) **(C.S.N., J.)**

17.10.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
vji

To

The partner,
Tvl.Salem Steel Suppliers,
No.12/1, Mooker Nallamuthu Street,
Parrys,
Chennai - 1.

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

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