BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.15673 of 2022

Tvl.Vimala Note Book,
Rep. by its Proprietor : K.Alagu,
No.9, Elukadal Agraharam,
Madurai. ... Petitioner

Vs.

The Assistant Commissioner (ST) (FAC),
Tamil Sangam Road Circle,
Madurai – 20. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus, directing the respondent to rectify the error in the order passed in TIN.33524901264/2011-12, dated 18.03.2021, while giving effect to the order of the Appellate Deputy Commissioner (ST)(FAC), Madurai (North), Madurai, passed in Appeal No & Year 352/2017 (TNVAT) dated 16.11.2017 relating to the assessment year 2011-12 pursuant to the petitioner's representation dated 24.08.2021 and their reminders dated 23.10.2021 and 14.04.2022 and consequently, issue Refund Voucher for the excess taxes paid by the petitioner as per Rule 14(18) of the Tamil Nadu Value Added Tax Rules, 2007 together with interest @ 6% per annum as per Section 42(5) of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This Writ Petition has been filed for issuance of Writ of Mandamus directing the respondent to rectify the error in the order dated 18.03.2021 passed in TIN 33524901264/2011-12, while giving effect to the order of the Appellate Deputy Commissioner (ST)(FAC), Madurai (North), Madurai, passed in Appeal No & Year 352/2017 (TNVAT) dated 16.11.2017 relating to the Assessment Year 2011-12 pursuant to the petitioner's representation dated 24.08.2021 and their reminders dated 23.10.2021 and 14.04.2022 and consequently, issue Refund Voucher for the Excess Taxes paid by the petitioner as per Rule 14(18) of the Tamil Nadu Value Added Tax Rules, 2007 together with interest @ 6% per annum as per Section 42(5) of the Tamil Nadu Value Added Tax Act, 2006.

2. The petitioner had earlier suffered an adverse order in the hands of the respondent on 21.07.2017. By the aforesaid order, the respondent had ordered reversal of amount of Rs.32,38,636/- as detailed below:-

ITC REVERSAL:

ITC REVERSAL to be done u/s 19(5)(a): Rs.3238636/-

ADD:
ITC REVERSAL for discount : Rs.83717/-

Total : Rs.3322353/-

ITC Reversal as per return : Rs.1977475/-

ITC Reversal paid : Rs.1236667/-

Balance : Rs.108211/-

Penalty

Penalty u/s 27(3) :Rs.924 + 2726 + 9336 + 1102

= Rs.14088

Penalty u/s27(4) : Rs.41859 + 12247

3. Aggrieved by the aforesaid order insofar as the reversal of input tax credit, the petitioner filed an appeal in Appeal No. & Year 352/2017 (TNVAT) before the Appellate Deputy Commissioner (ST) (FAC), Madurai (North), Madurai. The Appellate Deputy Commissioner (ST) (FAC) by an order dated 16.11.2017 has allowed the appeal insofar as the reversal of input tax credit on manufacture of exempted goods. Relevant portion of the aforesaid order dated 16.11.2017 of the Appellate Deputy Commissioner (ST) (FAC) reads as under:-

vii) Reversal of ITC on Manufacturing of exempted goods to a sum of Rs.32,33,636/-* is in order?

The dealer has purchased paper locally and manufactured exempted goods i.e. student note books For Manufacturing note books, the proportionate value of raw material would be 75% on the sale value. It is standard and normal practice prevailing he trade. Accordingly they properly made reversal as per Section 19(5)© of the TNVAT ACT while so there is no necessity to arrive again reversal by adopting and unwanted formula.

The appellant reversal of ITC is genuine and does not require any disturbances. But the assessing Officer falsely alleged that the appellants had not made reversal.

It is an admitted fact that they are manufacture of student note book and purchased paper both from the other state dealers as well as local dealer. The note book manufactured out of the raw material of paper purchased from local dealer is exempted and falling under item No.55 of Part B of the IVth schedule to the TNVAT ACT.

If the note books are manufactured out of the raw material of paper purchased from other state dealers, it is liable to be taxed at 5% and falling under item No. 132 of Part B of Ist Schedule to the TNVAT ACT.

As per the judicial report in Civil Appeal No.2806 of 2015 dated 24/11/2015 in the matter of Commercial Tax Officer Vs. A. Infrastructure the reversal made on the manufacture of student note books contrary to the statutory provisions and liable to be set aside, though the a appellants voluntarily made reversal and also made payments.

In view of the facts and judicial decisions reversal of ITC on manufacturing of exempted goods as the reversal has already made on the raw materials on paper again reversal of ITC under section 19(5)© is set aside and the portion of appeal is allowed.

(Rs.32,38,636/- wrongly mentioned in the impugned order)*

4. According to the petitioner, since the petitioner had voluntarily reversed a sum of Rs.19,77,475/- [32,38,636 – 12,61,161], the petitioner was entitled for refund of the same together with interest. It is case of the petitioner that instead of complying with the order of the Appellate Deputy Commissioner (ST) (FAC), the respondent kept mute and therefore, the petitioner was constrained to file W.P.(MD) Nos.11693 and 11696 of 2020 for the following relief:-

"*to issue a Writ of Mandamus, directing the respondent to give effect to the order of the Appellate Deputy Commissioner (ST)(FAC), Madurai (North), Madurai passed in Appeal Nos. & Year- 352/2017 (TNVAT) and 366/2017(TNVAT) dated 16.11.2017 relating to the assessment years 2011-12 and 2012-13 and consequently issue Refund Voucher for the excess taxes to the petitioner as per Rule 14(18) of the Tamil Nadu Value Added Tax Rules, 2007 together with interest @ 6% per annum as per Section 42(5) of the Tamil Nadu Value Added Tax Act, 2006.*"

5. The said Writ Petitions came to be allowed at the time of admission on 15.09.2020 with the following observations:-

> *"3. Therefore, the respondent is directed to give effect to the order granted in favour of the writ petitioner and also make the consequent refund along with interest @ statutory rate. The respondent is given eight (8) weeks time to comply with this direction.*
>
> *4.These writ petitions are allowed, accordingly. No costs."*

6. It is submitted that instead of fully complying with the above directions of this Court in the order dated 15.09.2020 in W.P.(MD) Nos. 11693 and 11696 of 2020 and the order of the Appellate Deputy Commissioner (ST) (FAC) dated 16.11.2017, the respondent has passed an order dated 18.03.2021 and granted relief only to a sum of Rs. 12,61,161/-, instead of Rs.32,38,636/-, without taking into consideration of Rs.19,77,475/- which was voluntarily reversed by the petitioner in the returns. Therefore, the petitioner has filed a representation/petition under Section 84 of the TNVAT Act, 2006 on 24.08.2021 before the respondent to rectify the error in the above order dated 18.03.2021. However, the respondent has not considered the same.

7. Therefore, the petitioner has filed this Writ Petition for a direction to the respondent to consider his representation/petition dated 18.03.2021 and refund the amount of Rs.19,77,475/- which was voluntarily reversed by the petitioner in the returns, together with interest thereon. It is submitted that the respondent is duty bound to fully comply with the order of this Court and the order of the Appellate Deputy Commissioner.

8. On the other hand, the learned Additional Government Pleader for the respondent would submit that this Writ Petition is devoid of merits. He would further submit that the amount which was unutilized in the petitioner's return will be carried forward to the next year's return and would have been utilized by the petitioner in the next year and therefore, there is no mistake committed by the respondent while passing the order dated 18.03.2021. Subsequently, a reference is made to the following passage from the Explanatory Memorandum filed by the respondent (erstwhile officer) pursuant to the order of this Court dated 19.07.2022 in this Writ Petition:-

d. since the statutory obligation also cast on it for pursuing the proper application of law of TNVAT, the learned Appellate Authority ignoring the legal background, instead deliberately ordered to refund even the ITC already reversed in the return and balance of ITC was carried over to the next year by the petitioner, hence the plea for refund of ITC was considered by it and allowed when there was no ITC left really;

e. the Departmental representative would appear on behalf of the assessing officer also not raised the clear point of law to be applied in this regard, but failed to rebut the wrong claim and there was no chance for the assessing authority to present and argue the case before the forum;

f. the cross appeal though filed by the Joint Commissioner (ST), Territorial, Madurai, was dismissed on the reason of belated representation of the "returned cross appeal memorandum" in the order No. MTSMP No. 67 of 2021 dated 11-11-2021 by the Hon'ble Sales Tax Appellate Tribunal (Additional Bench) [shortly referred to as STAT (AB)] Madurai.

g. when the Hon'ble Court was hearing the matter for the refund plea of the petitioner, there was no effective defense taken to the knowledge of the Hon'ble Court on the constraint faced by the assessing officers to modify the assessment involving the substantial question law in this matter, since only ITC was ordered to be refunded as per prayer but the Hon'ble court have conceived as the tax paid was in excess and so concluded in contrary to the real facts. Since no tax was paid for the year 2011-12 by the petitioner, where such refund question would arise and what was left behind for

> *alleging that the assessing officer has failed on his part. Therefore, the Hon'ble Court has been misled ultimately by the petitioner as the assessing officer has wantonly refusing refund against the orders of legal forums on this issue are baseless;*

9. The learned Additional Government Pleader for the respondent would further submit that against the order of the Appellate Deputy Commissioner (ST) (FAC) dated 16.11.2017, the respondent had filed an appeal before the Appellate Tribunal in MTSA No.82 of 2022 which was dismissed by the Tribunal on 08.12.2022 and the further appeal is now pending before this Court which is yet to be numbered.

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

11. In my view, the order of the Appellate Deputy Commissioner (ST) (FAC) dated 16.11.2017 had attained finality. Unless the said order is set aside in the manner known to law, the respondent ought to have complied with the order instead of deviating from the same. This conduct of the respondent is clearly in violation of the decision of the Hon'ble

Supreme Court in the case of **Union of India and others** Vs. **Kamalakshmi Finance Corporation Ltd.**, (1991) 55 ELT 433 : (1992) 1 SCC 648.

12. Further, the fact on record also indicates that further appeal of the respondent has also been dismissed on 08.12.2022 in MTSA No.82 of 2022. The further appeal which is said to have been filed before this Court is yet to be numbered. It is time-barred at this stage. The respondent cannot refuse to pass appropriate order on the representation/petition filed by the petitioner under Section 84 of the TNVAT Act, 2006 on 24.08.2021 followed by two reminders dated 23.10.2021 and 14.04.2022.

13. Under these circumstances, there shall be a positive direction to the respondent to consider and pass appropriate orders on the representation/petition of the petitioner under Section 84 of the TNVAT Act, 2006, within a period of 3 months from the date of receipt of a copy of this order and refund the amount, if any available to the petitioner. Needless to state, the order shall be passed without prejudice to the rights of the respondent in the proposed appeal filed before this Court.

14. Accordingly, this Writ Petition stands allowed with the above liberty. No costs.

15.04.2024

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

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Copy To:

The Assistant Commissioner (ST) (FAC),
Tamil Sangam Road Circle,
Madurai – 20.

C.SARAVANAN, J.

JEN

W.P.(MD) No.15673 of 2022

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