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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.(MD) No.1009 of 2016
and
C.M.P.(MD) No.6146 of 2016

The State of Tamil Nadu
The Deputy Commercial Tax Officer
Uthamapalayam
Theni District ... Appellant

-vs-

Bharat Interiors
rep.by its Proprietor P.Kabeer
Chellandiamman Koil Street
Cumbum, Theni District ... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 25.06.2007, passed in W.P.(MD) No.10762 of 2005, on the file of this Court.

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

For Respondent : No appearance

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J U D G M E N T

[Judgment of the Court was made by A.D.JAGADISH CHANDIRA, J.]

This writ appeal is directed against the order dated 25.06.2007, passed in W.P.(MD) No.10762 of 2005, directing the appellant to issue a refund voucher with interest payable to the respondent herein under Section 24(4) of the TNGST Act, in pursuance of the order in C.No.1504/2003-04, dated 01.06.2005, passed by the appellant, within a period of four weeks from the date of receipt of a copy of the order.

2. The respondent / writ petitioner is an assessee. The appellant / respondent had issued a refund voucher, dated 01.06.2005, under Section 24(4) of the TNGST Act, directing the authority concerned to repay the excess tax amount paid with interest to the respondent. Since the authority concerned had not refunded the excess tax amount with interest, during October, 2005, the respondent had filed the writ petition in W.P.(MD) No.10762 of 2005 seeking a direction to the appellant to issue a refund voucher with interest to him and the said writ petition came to be allowed on 25.06.2007 directing the appellant to repay the excess tax amount with interest, within a period of four weeks from the date of receipt of a copy of the

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order. Challenging the same, the respondent in the writ petition has filed this writ appeal.

3. Learned counsel for the appellant would submit that though a refund voucher dated 01.06.2005 was issued by the appellant, subsequently, after issuance of notice to the respondent herein, a revised order has been passed by the appellant *vide* ROC No.1504/2004/B1, dated 16.12.2005 and based on the said revised order, the respondent was liable to pay a sum of Rs.419.00 towards resale tax and a sum of Rs.210.00 towards penalty and the said revised order was not brought to the notice of the learned Single Judge at the time of passing the final order, thereby, he prays for setting aside of the order passed by the learned Single Judge.

4. Despite substituted service has been effected in the local news paper on 20.06.2024 and the respondent's name has been printed in today's cause list, he has not represented the matter either in person or through his counsel.

5. On perusal of the materials available on record, it is seen that though the appellant had issued a refund voucher on 01.06.2005,

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subsequently, a revised order has been passed by the appellant on 16.12.2005, before the writ petition filed by the respondent came to be disposed of and as per the revised order, the respondent was liable to pay a sum of Rs.419.00 towards resale tax and a sum of Rs.210.00 towards penalty. However, the said factum was not brought to the notice of the learned Single Judge at the time of disposing of the writ petition. Hence, we are of the view that on this sole ground, the order passed by the learned Single Judge is liable to be set aside.

6. Accordingly, the writ appeal is allowed and the order dated 25.06.2007, passed in W.P.(MD) No.10762 of 2005, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

[A.D.J.C., J.] [K.R.S., J.]

02.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

krk

To:
The Deputy Commercial Tax Officer,
Uthamapalayam,
Theni District.

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