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W.P.No.33593 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P.No.33593 of 2022
and
W.M.P.No.33048 of 2022
in
W.P.No.33593 of 2022

Easwaran Brothers India Private Limited
Represented by its Director
Mr.U.Sundaramaharajan
10/32-A, H.M.L. Tea Complex, Thottam Salai
Vedapatti, Coimbatore - 641 007.

.. Petitioner

Vs.

The Assistant Commissioner (ST) (FAC)
Perur Circle
Coimbatore - 641 018.

.. Respondent

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records leading to the issuance of notice bearing reference No.33291026289/2022/A4 dated 25.11.2022 issued by the respondent herein and quash the same and direct the respondent herein to grant refund of Rs.13,36,741/- already sanctioned vide order bearing reference TIN:33291026289/2017-18 dated 06.10.2022.



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For Petitioner : Mr.Adithya Reddy
For Respondent : Ms.Amirta Dinakaran
Government Advocate (Taxes)

ORDER

This common order will now govern the captioned main writ petition and captioned 'Writ Miscellaneous Petition' ['WMP'] thereat.

2. Captioned main writ petition has been filed assailing a 'notice dated 25.11.2022 bearing reference No.33291026289/2022/A4 issued by the lone respondent' [hereinafter 'impugned notice' for the sake of convenience and clarity].

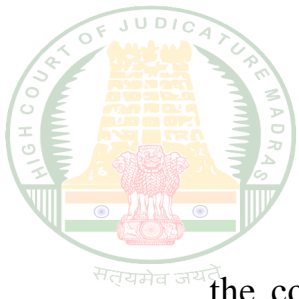
3. Owing to the narrow compass on which the matter turns, short facts will suffice. Short facts shorn of granular particulars are that the petitioner company is a registered dealer qua erstwhile 'the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act No.32 of 2006)' [hereinafter 'TNVAT Act' for the sake of convenience and clarity]; that on the GST (Goods and Services Tax) regime coming into force on and from 01.07.2017, erstwhile TNVAT Act stood subsumed; that those of dealers



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who had 'Input Tax Credit' ['ITC'] had the option of either seeking refund or carrying forward the ITC to GST regime; that the writ petitioner opted for the former i.e., refund; that there was some technical glitch in such option, the matter travelled to Hon'ble Supreme Court vide *Filco Trade* case [*Union of India and another Vs. Filco Trade Centre Pvt. Ltd., and another* {MANU/SCOR/64133/2022}] and Hon'ble Supreme Court in and by an order dated 22.07.2022 made in Special Leave to Appeal C.Nos.32709/2018 & 32710 of 2018 directed the Department to open a common portal for availing transitional credit through TRAN-1 and TRAN-2 for two months i.e., with effect from 01.09.2022 to 31.10.2022; that this Court is informed that this now stands extended upto 2024; that the writ petitioner's request for refund was processed and the respondent has made an 'order dated 06.10.2022 bearing reference TIN No.33291026289/2017-18' [hereinafter 'provisional refund order' for the sake of convenience, brevity and clarity] and issued what is known as FORM-P qua provisional refund order making it clear that the writ petitioner is entitled to refund of Rs.13,36,741/- qua ITC qua assessment year 2017-18; that the writ petitioner is yet to receive the refund i.e., see



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the colour of coin; that under such circumstances, the impugned order has been made by the respondent *inter alia* requesting the writ petitioner to opt for latter of aforementioned two options i.e., carrying forward the ITC to GST regime.

4. Highlighting the aforementioned facts, learned counsel on record for writ petitioner submits that there are two options i.e., carry forward and refund and when the writ petitioner has opted for refund, the impugned order ought not to have been issued particularly when a provisional refund order has been issued after processing the refund application.

5. Ms.Amirta Dinakaran, learned Government Advocate accepted notice for lone respondent and on instructions, learned Government Advocate, adverting to the aforementioned 06.10.2022 provisional refund order made by lone respondent submitted that the dealer has taken the position that it had mistakenly reversed ITC in June 2017 and that has led to the issue of impugned notice.



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6. Considering the facts and circumstances of the case, a counter from Revenue is really not necessary. This Court is of the view that the main writ petition can be disposed of by making a simple order after having heard both sides.

7. It is clear from the narrative thus far that the dealer has two options i.e., refund or carrying forward the ITC to GST regime, the dealer in the case on hand, has opted for the former not the latter. The common portal giving dealer the option for choosing former or latter also is now active till 2024. In such circumstances, the dealer cannot be compelled to opt for one of the two i.e., refund or carrying forward the ITC to GST regime. It is after all an option given to the dealer. In the case on hand, the case of writ petitioner dealer stands buttressed by the provisional refund order made by the same sole respondent and issue of what is referred to as 'FORM-P' clearly quantified the entitlement of writ petitioner at Rs.13,36,741/-.



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8. Therefore, this Court has no difficulty in coming to the conclusion that the impugned notice has been erroneously issued and the same deserves to be interfered with / set aside.

9. The following order is passed :

(a) Impugned notice is set aside as refund has already been opted for by the writ petitioner, the same has been processed by Revenue and a provisional refund order also has been passed besides issue of FORM-P which is a procedural facet of refund;

(b) Lone respondent shall ensure that the refund as quantified in 06.10.2022 [bearing reference TIN No.33291026289/2017-18] provisional refund order and FORM-P annexed to the same (to be noted Rs.13,36,741/- INR {Rs.Thirteen Lakhs Thirty Six Thousand Seven Hundred and Forty One Only}) is made available to the writ petitioner as expeditiously as the



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official business of the respondent would permit and in any event, within three weeks from today i.e., on or before 05.01.2023;

10. Captioned Writ Petition is disposed of in the aforesaid manner with the aforesaid directives. Consequently, captioned WMP is disposed of as closed, the same having become unnecessary. There shall be no order as to costs.

15.12.2022
(2/2)

Index: Yes/No
Speaking / Non-speaking order

mk

To
The Assistant Commissioner (ST) (FAC)
Perur Circle
Coimbatore - 641 018.



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M.SUNDAR, J.,

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