IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.17198 & 17199 of 2015

Tvl.Tech-Zone Industries India (P) Ltd.,
represented by its Managing Director
A.Muniappan
No.9/4, Andavar Complex, First Floor
Agilmedu 6th Street
Erode 638 011 ... Petitioner in both the writ petitions

-vs-

1. The Commissioner of Commercial Taxes
   2nd Floor, Ezhilagam
   Chepauk
   Chennai 600 005

2. The Joint Commissioner (CT)
   Office of the Commercial Taxes
   Hasthampatti
   Salem-7

3. The Assistant Commissioner (CT)
   Mettur Road Assessment Circle
   Erode ... Respondents in both the writ petitions

Petitions under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the third respondent to issue the refund voucher along with interest as requested vide representation dated 19.8.2013 in so far as the assessment years 2007-08 and 2008-09 are concerned.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.S.Kanmani Annamalai
Addl.Government Pleader (Taxes)

ORDER

These two writ petitions have been filed by M/s Tech-Zone Industries India (P) Limited represented by its Managing Director seeking a mandamus under Article 226 of the Constitution of India directing the Assistant Commissioner (CT), Mettur Road Assessment Circle, Erode, the third respondent herein to issue the refund vouchers along with interest as requested vide representation dated 19.8.2013 so far as the assessment years 2007-08 and 2008-09 are concerned.

2. The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act and being an assessee on the file of the third respondent, filed statutory appeals against the assessment proceedings of the third respondent with regard to the assessment years 2007-08 & 2008-09 respectively, which were allowed by the appellate authority by order dated 23.2.2011. But the claim of the petitioner in the aforesaid background shows that during the pendency of the said appeals, the petitioner has made payment towards disputed tax. However, on the appeals being allowed, out of the payment made during the pendency of the appeal, after due adjustment, the remaining balance amount is to be refunded back in accordance with Section 45 of the Tamil Nadu Value Added Tax Act. The learned counsel for the petitioner also brought to the notice of this Court the proceedings issued by the Assistant Commissioner (CT), Mettur Road Assessment Circle, Erode in TIN No.33103043751/2007-08 & 2008-09 dated 10.12.2012, which would show that the assessments of the petitioner were revised, as per the orders of the Appellate Deputy Commissioner (CT), Erode, as follows:-
''2007-08

PARTICULARS		TURNOVER (Rs.)	DUE AMOUNT (Rs.)
Sale of LPG kits @ 4%	:	1,31,27,257	5,25,090
Sale of agricultural sprayers & spare parts @ 12.5%	:	10,53,877	1,31,735
Tax due arrived at the time of field audit	:		1,536
Total tax due			6,58,361
ITC claim for the year 2007-08	:	7,79,963	

Less: ITC reversal for stock
transfer without F form
u/s 19(4) and Rule 10(9)(b)
848977 x 195985 : 4,993
17869812

Eligible ITC for the year 2007-08 : 7,74,970
Tax paid at the time of field audit: 1,536
Tax paid at the time of appeal : 2,84,592

		10,61,098
Excess		4,02,737

A Notice in form 'P' is issued
Penalty due : Nil
Penalty paid : Nil
Balance : Nil

''2008-09

PARTICULARS	TURNOVER (Rs.)	DUE AMOUNT (Rs.)
Sale of LPG kits @ 4%		3,97,03,855
Tax due		15,88,155
Tax payable u/s 12		332
Total tax due		15,88,487
Tax paid as per return	28,399	
Tax paid at the time of appeal	11,55,729	
Tax paid @ 12%	332	
Eligible ITC for the year 2008-09	12,49,784	
		24,34,244
Excess		8,45,757

A Notice in form 'P' is issued
Penalty due : Nil
Penalty paid : Nil
Balance : Nil”

3. Subsequently, Form-P were also issued on 10.12.2012, wherein the Assistant Commissioner (CT), Mettur Road Assessment Circle also admitted the case of the petitioner for refund of Rs.4,02,737/- and Rs.8,45,757/- respectively. Based on the Form-P refund order issued under Rules 8(4), 8(6), 11(1), 14(18), 14(22) dated 10.12.2012, the petitioner addressed letters to the Joint Commissioner (CT), Hasthampatti, Salem and also to the Principal Secretary/Commissioner of Commercial Taxes, Chennai on 30.10.2014 making a request to instruct the assessing authority to refund the excess amount with interest as early as possible. Admittedly, till date, there was no response. Hence, the petitioner has come to this Court.

4. The learned Additional Government Pleader for the respondents, drawing the notice of this Court to Form-P issued by the Assistant Commissioner (CT), Mettur Road Assessment Circle, Erode, has submitted that a sum of Rs.4,02,737/- and Rs.8,45,757/- respectively is refundable to the petitioner, but it is adjustable towards arrears of tax/compounded amount/penalty due by the petitioner for the previous years and the current years. However, there is no mention made with regard to any arrears of tax or the compounded amount or penalty. He has further submitted that if the refundable amount exceeds a sum of Rs.1,00,000/-, as per the existing guidelines, the Assistant Commissioner (CT) has no powers, and he has to take specific orders from the higher ups.

5. Be that as it may, in the light of Section 42(5) of the Tamil Nadu Value Added Tax Act, which reads as follows,

> ''(5) Where the tax paid under this Act is found to be in excess on assessment or revision of assessment, or as a result of an order passed in appeal, revision or review, the excess amount shall be refunded to the dealer after adjustment of arrears of tax, if any, due from him. Where the excess amount is not refunded to the dealer within a period of ninety days from the date of the order of assessment or revision of assessment and in the case of order passed in appeal, revision or review within a period of ninety days from the date of order giving effect to such order passed in appeal, revision or review, the Government shall pay by way of interest, where the amount refundable is not less than one hundred rupees, a sum equal to a sum calculated at the rate of half per cent or part thereof of such amount for each month or part thereof after

the expiry of the said period of ninety days.
Explanation.--For the purpose of this section, the expression ''order passed in appeal, revision or review'' shall not include order passed in such appeal, revision or review with direction to make fresh assessment order.''

this Court hereby directs the first respondent-Commissioner of Commercial Taxes, Chennai to consider the case of the petitioner and pass appropriate orders directing the third respondent-Assistant Commissioner (CT), Mettur Road Assessment Circle to refund the excess amount along with interest as indicated in the Form-P refund order dated 10.12.2012 for a sum of Rs.4,02,737/- and Rs.8,45,757/- respectively to the petitioner, within a period of two weeks from the date of receipt of a copy of this order. The writ petitions are disposed of accordingly. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

ss

To

1. The Commissioner of Commercial Taxes
2nd Floor, Ezhilagam
Chepauk, Chennai 600 005

2. The Joint Commissioner (CT)
Office of the Commercial Taxes
Hasthampatti, Salem-7

3. The Assistant Commissioner (CT)
Mettur Road Assessment Circle
Erode

+1cc to Mr.R.Senniappan, Advocate, S.R.No.29851
+1cc to the Special Government Pleader(Taxes), S.R.No.29696

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VSN(CO)
CA(10/08/2015)