IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.Nos.29615 and 29616 of 2015

Tvl.Anand Exports [Petitioner in both WPs]
Rep by its Proprietor G.Anand
16-B Muthukumaran Street
K.K.Nagar Madurai 20

Vs

1 The Commercial Tax Officer
(Enforcement) Roving Squad Cuddalore

2 The Additional Commissioner
(Revision Petition) Office of the
Commissioner of Commercial Taxes Chennai

3 The Assistant Commissioner (CT)
Thallakulam Assessment Circle Madurai
[Respondents in both Wps]

Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents to refund the sum of Rs.62 947/- and Rs.5,72,719/- respectively as per the order of the 2nd respondent passed in Revision petition J1/RP/37/2014 and J1/RP/44/2014 respectively even dated 31.12.2014 together with interest @ 6% per annum from 1.4.2015 till date of issue of the Refund Voucher in respect of each of these petitions.

For petitioner : Mr.A.Chandrasekaran

For respondent : Mr.S.Manoharan Sundaram, AGP(T)

C O M M O N O R D E R

Heard the learned counsel for the petitioner and Mr.S.Manoharan Sundaram, learned Additional Government Pleader (Taxes), who took notice for the respondents and with their consent, the writ petitions are taken up for disposal.

2. These writ petitions have been filed for the issue of a writ of mandamus to direct the respondents to refund a sum of Rs.62,947/- and Rs.5,72,719/- respectively as per the order of the

2nd respondent passed in Revision petition Nos.J1/RP/37/2014 and J1/RP/44/2014 respectively dated 31.12.2014 together with interest @ 6% per annum from 1.4.2015 till the date of issue of the Refund Vouchers.

3. The petitioner is an exporter and an assessee on the file of the 3rd respondent under the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act. The case of the petitioner is that on 14.09.2012 and 16.09.2012, though the consignments which were transported to their foreign buyers in the vehicles TN 64 C 8663 and TN 64 C 4387 were properly accompanied with the documents, the same were detained by the 1st respondent, without any valid reason and goods detention notices were issued on 21.09.2012. Not accepting the explanation submitted by the petitioner, refusing to release the consignments, the 1st respondent apart from levying advance tax, also levied compounding fee by orders dated 22.09.2012, which were also paid by the petitioner for the purpose of release of goods by way of demand drafts. Thereafter, the petitioner filed revision petitions before the Joint Commissioner (CT), Vellore Division in R.P.Nos.8 of 2012 and 2 of 2013 respectively, which were dismissed vide orders dated 21.03.2014. Aggrieved over the same, the petitioner filed further revision petitions before the 2nd respondent, which were ordered on 31.12.2014 by refixing the compounding fee at Rs.2,000/- in each case and ordered refund of both tax as well as compounding fee after deducting Rs.2,000/- in each case.

4. It is the contention of the learned counsel for the petitioner that the respondents 1 and 3 are bound to give effect to the orders of the 2nd respondent and consequently have to refund the excess amount paid by the petitioner within 90 days without interest and thereafter with interest as per Rule 14(18) of the Tamil Nadu Value Added Tax Rules, 2007. Further, according to him, Section 42(5) of the Tamil Nadu Value Added Tax Act, 2006, provides for refund of the excess amount paid by assessees with interest at 6% p.a., if the amount is refunded after a period of 90 days from the date of the order. However, it is his contention that though the petitioner gave representations to the 1st and 3rd respondents on 14.02.2015, following by reminders dated 22.06.2015, there is no response. Hence, the petitioner is before this Court.

5. Admittedly, as against the levy of advance tax and compounding fee, the petitioner preferred revision petitions before the Joint Commissioner (CT) Vellore Division, which were got dismissed by orders dated 21.03.2014, against which, second revision petitions were filed before the Additional Commissioner in R.P.J1/RP/37/2014 and R.P.J1/RP/44/2014 respectively, in and by which, the levy of advance tax and compounding fee were set aside by the Additional Commissioner by orders dated 31.12.2014. The said orders have become final. Therefore, pursuant to the orders of the Additional Commissioner dated 31.12.2014, the petitioner is

entitled to get back the amount paid as refund towards advance tax as well as compounding fee, after deducting a sum of Rs.2,000/- for each consignment. To that effect, on the basis of the orders passed by the Additional Commissioner, the petitioner submitted representations dated 14.02.2015 and the same are still pending consideration.

6. Hence, the respondents 1 and 3 are directed to pass orders on the representations of the petitioner dated 14.02.2015 for refund of the advance tax and compounding fee, as expeditiously as possible, preferably within a period of one week, in the light of the orders passed by the Additional Commissioner in R.P.J1/RP/37/2014 and R.P.J1/RP/44/2014 respectively dated 31.12.2014.

The writ petitions are disposed of accordingly. No costs.

Sd/-
Asst.Registrar (Records)

/true copy/

Sub Asst. Registrar

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To

1 The Commercial Tax Officer
(Enforcement) Roving Squad Cuddalore

2 The Additional Commissioner
(Revision Petition) Office of the
Commissioner of Commercial Taxes Chennai

3 The Assistant Commissioner (CT)
Thallakulam Assessment Circle Madurai

1 cc to Mr.A. Chandrasekar, Advocate, Sr. 51353

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LRS (CO)
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