IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.3725 to 3729 of 2015

L&T Valves Limited,
(formerly Audco India Limited)
rep. by its Head (Finance & Accounts) ... Petitioner in all cases

Vs.

The Assistant Commissioner (CT),
Anna Salai II Assessment Circle,
'Sire Mansion', 621, Anna Salai,
Chennai-600 006. ... Respondent in all cases

Prayer in W.P. No.3725 of 2015:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondent herein to amend the assessment order passed in TNGST.0620041/1999-2000 dated 01.09.2003 under Rule 32(2) of the Tamil Nadu General Sales Tax Rules, 1959 pursuant to the order of this Court in T.C. (R)No.92 of 2009 dated 08.10.2010 and to grant refund of a sum of Rs.7,84,033/- pertaining to the turnover of Rs.7,84,03,334/-.

Prayer in W.P. No.3726 of 2015:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondent herein to amend the assessment order passed in TNGST.0620041/2000-01 dated 31.05.2004 under Rule 32(2) of the Tamil Nadu General Sales Tax Rules, 1959 pursuant to the order of this Court in T.C. (R)No.93 of 2009 dated 08.10.2010 and to grant refund of a sum of Rs.10,08,626/- pertaining to the turnover of Rs.10,08,62,559/-.

Prayer in W.P. No.3727 of 2015:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondent herein to amend the assessment order passed in TNGST.0620041/2001-02 dated 25.03.2006 under Rule 32(2) of the Tamil Nadu General Sales Tax Rules, 1959 pursuant to the order of this Court in W.P. No.15218 of 2008 dated 08.10.2010 and to grant refund of a sum of Rs.15,26,405/- pertaining to the turnover of Rs.15,26,40,507/-.

Prayer in W.P. No.3728 of 2015:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondent herein to amend the assessment order passed in TNGST.0620041/2002-03 dated 15.06.2006 under Rule 32(2) of the Tamil Nadu General Sales Tax Rules, 1959 pursuant to the order of this Court in W.P. No.15219 of 2008 dated 08.10.2010 and to grant refund of a sum of Rs.20,12,791/- pertaining to the turnover of Rs.20,12,79,062/-.

Prayer in W.P. No.3729 of 2015:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondent herein to amend the assessment order passed in TNGST.0620041/2003-04 dated 29.06.2006 under Rule 32(2) of the Tamil Nadu General Sales Tax Rules, 1959 pursuant to the order of this Court in W.P. No.15220 of 2008 dated 08.10.2010 and to grant refund of a sum of Rs.22,30,140/- pertaining to the turnover of Rs.22,30,14,018/-.

For Petitioner in all cases : Mr.N.Inbarajan

For Respondent in all cases : Mr.Manoharan Sundaram
AGP (T)

C O M M O N O R D E R

With the consent on either side, the Writ Petitions are taken up for final disposal at the admission stage.

2.The petitioner has come forward with the aforesaid prayers.

3.The case of the petitioner is that the respondent will have to implement the judgment and the order of this Court rendered in T.C.(R) Nos.92 & 93/2009 dated 08.10.2010 and a batch of cases decided by a Division Bench of this Court by its judgment dated 08.10.2010 which has been reported in 36 VST 67 (Madras). According to the petitioner, the Division Bench of this Court held that purchase turnover of inputs purchased against Form XVII declaration contemplated by Section 3(3) of the TNGST Act, 1959, when used in the manufacture of final product exported, will not attract differential levy under Section 3(4) and the petitioner is the party before this Court and their Tax Cases and Writ Petitions were allowed by judgment dated 08.10.2010. According to the petitioner, though the State of Tamil Nadu filed a Special Leave Petition before the Hon'ble Apex Court, there is no stay. Since the petitioner has succeeded, the respondent is bound to refund the tax paid under protest, pursuant to the judgment of the Division Bench dated 08.10.2010.

4.In support of his contention, learned counsel for the petitioner drew the attention of this Court to Rule 32(2) of General Sales Tax which has been extracted below:

> "(2)The order passed on appeal or revision shall be given effect to by the assessing authority who shall refund without interest within three months from the date of the communication of the order, any excess tax found to in Form C notifying the dealer of the adjustment of excess tax towards arrears, if any or if there are no arrears of tax due under the Act from the dealer or if after such adjustment there is still an excess, the officer shall refund the amount of the excess tax and along with such notice, he shall also send to the dealer a voucher for claiming refund of that amount without interest from the treasury. If any amount is found to be due from the dealer, the assessing authority shall serve upon the dealer a notice in Form B-3 and the dealer shall pay the sum demanded in the mannter specified in the notice."

5.According to the petitioner, the order passed on appeal or revision shall be given effect to by the assessing officer and the authority should re-fund without interest, within three months from the date of the communication of the order. Admittedly, if any order, he is entitled to refund of the same.

6.Per contra, learned Additional Government Pleader appearing for the respondent contended that Special Leave Petition has been filed and the matter is yet to be listed for hearing. He drew the attention of this Court to the order of the Hon'ble Apex Court, which reads as follows:

> "Learned counsel appearing for the petitioner submitted that the petitioner has already deposit a sum of 5,000/- towards costs on November 12, 2013. He further submits that he has also filed the documents on January 20, 2014".

7.He further submitted that when the matter is pending before the Apex Court, there is no need for re-fund and it is only after the outcome of the SLP/Civil Appeal. He also drew the attention of this Court to provisions of Section 39(A) of the Tamil Nadu General Sales Tax Act, which reads as follows:

> "39-A. Amendment of order of assessment, etc. - (1)Where as a result of any order passed in appeal or revision or review under this Act, any change becomes necessary, in the order of assessment, the appropriate appellate authority, or revising or reviewing authority may authorise the assessing authority to amend the order of assessment accordingly and on such amendment being made, any amount overpaid by the assessee shall be refunded to him without interest, or the further amount of tax, if

any, due from him shall be collected in accordance with the provisions of this Act, as the case may be.”

8.In reply, learned counsel for the petitioner submitted that the matter has not come up for hearing and in terms of Rule 32(2), the respondent is bound to refund the amount and in case they succeed, they can demand the amount from the petitioner.

9.Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent and perused the documents available on record.

10.A reading of Section 39(A) makes it clear that pending the exercise of the powers of appeal, revision or review, the appropriate appellate authority or revising or reviewing authority may on application made by the assessing authority, stay the refund to the assessee of any amount overpaid in pursuance of the order. The provision mentioned by the respondent applies only after the matter has gone out of the department. Once the matter has taken up, unless and otherwise there is an order enabling the respondent not to refund the amount, the respondent will have to refund the amount. Rule 32(2) referred to by the petitioner has been framed pursuant to the rule making power under Section 53 of the Tamil Nadu General Sales Tax Act, 1959. Hence, the contention of the respondent that there is no provision for re-fund of amount and more particularly, there is no time limit mentioned in the Section, cannot be accepted. Pursuant to Rule 32(2) of the Act, which has got a legal sanctity, entire amount due to the petitioner, will have to be re-funded. Hence, I allow the petitions and direct the respondent to pay the amount lying with them together with interest, as contemplated under Rule 32(2) of the Act, which has been extracted supra.

11.This Court also makes it clear that in case, the department is able to get the interim order from the Apex Court directing them not to disburse the amount, the same may be communicated to the petitioner and only on that score, the amount may be withheld.

12.In the result, the Writ Petitions are allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vga

To

The Assistant Commissioner (CT),
Anna Salai II Assessment Circle,
'Sire Mansion', 621, Anna Salai,
Chennai-600 006.

+1cc to M/s.N.Inbarajan, Advocate, S.R.No.12855
+1cc to the Special Government Pleader(Taxes), High Court, Madras
S.R.No.13394

W.P.Nos.3725 to 3729 of 2015

RSK(CO)
CA(24/03/2015)