IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.11.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.No.2167/2014

M/s.PPN Power Generating Company Pvt.Ltd.,
Rep.by its Managing Director,
Mr.P.Karthik Anand Reddy,
Jhaver Plaza, 3rd Floor,
No.1-A,Nungambakkam High Road,
Chennai-600 034. ..Petitioner

..vs..

The Deputy Commissioner of Customs (Refunds),
Custom House,
No.60, Rajaji Salai,
Chennai-600 001. ..Respondent

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, directing the respondent to implement the final order No.653/2012 dated 11.06.2012 of the Hon'ble Customs excise & service Tax Appellate Tribunal within a reasonable time frame.

For Petitioner : Mr.G.Derrick Sam

For Respondent : M/s.R.Hemalatha
Senior Standing Counsel

ORDER

Heard Mr.G.Derrick Sam, learned counsel appearing for the petitioner and M/s.R.Hemalatha, learned Senior Standing Counsel appearing for the respondent.

2 This writ petition has been filed by the petitioner seeking for issuance of a writ of mandamus to direct the respondent to implement the final order passed by the Customs Excise and Service Tax Appellate Tribunal dated 11.06.2012 made in No.653/2012.

3 The operative portion of the final order reads as follows:-

"...

2.We find that the lower appellate authority has remanded the refund application for fresh examination. The department is in appeal on the ground that the principles of unjust enrichment has to be examined while considering the refund. The Ld. Advocate has no objection to such a proposal. As such, the appeal filed by the department along with the stay petition is dismissed with the direction that while passing the fresh order in terms of the lower appellate authority's remand, the original authority may also examine the applicability of principles of unjust enrichment. Since the matter is very old, the Ld. Advocate appearing for the respondents seeks a direction to the original authority for expeditious disposal of the case. We consider the request reasonable and hence, we direct the original authority to dispose of the matter within a period of two months from the date of receipt of a copy of this order."

4 Pursuant to the above direction, the petitioner has given a representation to the respondent on 02.05.2013 requesting implementation of the order of the Tribunal. However, this did not evoke any response. Therefore, the petitioner submitted another representation on 10.07.2013 followed by a reminder dated 13.08.2013 and a representation to the Commissioner of Customs [Exports] was also given on 02.09.2013, which has been received by the office of the Commissioner of Customs [Exports] on 04.09.2013, vide date seal. In spite of these representations, no action has been initiated by the respondent which prompted the petitioner to approach this Court by way of this writ petition.

5 In this writ petition, notice was ordered already on 29.01.2014. However, till date, no instructions has been given by the respondent to the learned Standing counsel. The case came to be listed before this Court on 02.11.2016 and was directed to be posted today. Even today, the learned Standing counsel has not been given with any instructions. Therefore, this Court is not inclined to grant any further time.

6 Considering the scope of the relief sought for in this writ petition and taking note of the positive direction issued by the Customs excise & service Tax Appellate Tribunal, the respondent is bound to comply with the direction. Accordingly, there will be a direction to the respondent to consider the

representations of the petitioner dated 02.05.2013 ; 10.07.2013 ; 13.08.2013 and 02.09.2013 respectively and pass appropriate orders on merits and in accordance with law, as directed by the Customs excise & service Tax Appellate Tribunal within a period of eight weeks from the date of receipt of a copy of this order.

7 The writ petition stands disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To

The Deputy Commissioner of Customs (Refunds),
Custom House,
No.60, Rajaji Salai,
Chennai-600 001.

+1cc to M/S.Hari Radhakrishnan, Advocate Sr.64502
+1cc to M/S.R.Hemalatha, Advocate Sr.64506

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nr[co]
srg 05/12/2016