BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.09.2016
CORAM
THE HONOURABLE DR.JUSTICE S.VIMALA
W.P(MD)Nos.17302 to 17304 of 2016

A.C.Engineering,
Represented by its' Proprietor
S.Sahaya Kapoor,
13/163, Matha Street,
Idinthakarai 627 104,
Tirunelveli District. ... Petitioner in all WPs

vs.

The Commercial Tax Officer(FAC),
Nanguneri,
Tirunelveli District. ... Respondent in all WPs

Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, to the respondent to consider the representation of the petitioner dated 25.06.2016, and direct the respondent to issue a refund voucher for the refund of Rs.39,459/-, Rs.24,534/- and Rs.3,46,719/- with interest to the petitioner under section 42 (5) of the Tamilnadu Value Added Tax Act, in pursuance to the Notice of Assessment and Refund Order in Form ''P'' in assessment No.33055602687/2010-11, 33055602687/2011-12, 33055602687/2012-13, dated 20.12.2013 within such time as may be directed by the Hon'ble Court.

For Petitioner(in all WPs) : Mr.M.Azeem

For Respondents(in all WPs) : Mr.R.Karthikeyan
Addl. Government Pleader

C O M M O N O R D E R

These writ petitions have been filed for issuance of Writ of Mandamus, to direct the respondent to consider the representation of the petitioner dated 25.06.2016, and to issue a refund voucher for the refund of Rs.39,459/-, Rs.24,534/- and Rs.3,46,719/- respectively, with interest to the petitioner under section 42(5) of the Tamilnadu Value Added Tax Act, in pursuance to the Notice of Assessment and Refund Order in Form ''P'' in Assessment Nos.33055602687/2010-11, 33055602687/2011-12, 33055602687/2012-13 respectively, dated 20.12.2013 within a time frame.

2.The learned counsel for the petitioner has submitted that the respondent passed necessary orders for refund of the excess tax amount paid, but not enclosed the refund voucher and prayed this Court to direct the respondent to issue refund voucher.

3.The learned Additional Government Pleader appearing for the respondent would submit that there is a proposal to have reassessment of the earlier tax assessed and therefore, at this stage there cannot be any direction, granting refund voucher.

4. The contention of the petitioner that as per the provisions of Section 42(5) of the Tamil Nadu Value Added Tax Act, 2006, r/w Rules 8(6) and Rule (11), the excess amount due to the petitioner has to be refunded with interest within a period of nine days, holds good. For the sake of brevity, Section 42(5) is extracted hereunder:

> "(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."

5. It is seen that the refund order in all the writ petitions is dated 20.12.2013 and it is wholly unjustifiable on the part of the respondent to make the petitioner wait for such a long time.

6. Under such circumstances, the respondent is directed to issue refund voucher to the petitioner for the refund of Rs.39,459/-, Rs.24,534/- and Rs.3,46,719/- respectively, within a period of eight weeks from the date of receipt of a copy of this order. However, it is made clear that this order shall not preclude the respondent from reassessing the earlier tax and collecting the excess amount, if any from the petitioner in future.

With the above direction, the Writ Petitions are disposed of. No costs.

Sd/-
Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To

The Commercial Tax Officer(FAC),
Nanguneri,
Tirunelveli District.

+3 cc toMr.M.Azeem, Advocate in SR No.54267, 54268, 54269
+1 cc to the Spl.Govt.Pleader in SR No.54729

W.P(MD)Nos.17302 to 17304 of 2016

NBI/AR
ANR/PV/26.10.2016/3P/6C