

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.36185 to 36188 of 2003

M/s Concrete Products
and Construction Company,
No.766, Poonamallee High Road,
Kilpauk, Chennai 600 010 .. Petitioner in W.P.Nos.36185 &
36187 of 2003

M/s Nellai Concrete Products
and Construction Company (P) Ltd.,
No.766, Poonamallee High Road,
Kilpauk, Chennai 600 010 .. Petitioner in W.P.No.36186 of
2003

M/s Kottukulam Engineers (P) Ltd.,
No.766, Poonamallee High Road,
Kilpauk, Chennai 600 010 .. Petitioner in W.P.No.36188 of
2003

Vs.

1) Union of India owning the
Indian Railways,
Represented by
General Manager,
Southern Railway,
Chennai 600 023

2) Financial Advisor &
Chief Accounts Officer,
Southern Railway,
Chennai 600 023

.. Respondents in all Writ Petitions

W.P.No.36185 of 2003

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent that has led to the issue of the impugned proceedings in No.S.26/S/PER/RBC/Modvat dated 25.10.2003 and quash the same and direct the respondents to refund the petitioner a sum of Rs.9,94,493/- by way of Modvat refund with interest at 18% per annum.

W.P.No.36186 of 2003

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent that has led to the issue of the impugned proceedings in No.S.26/S/PER/RBC/Modvat dated 25.10.2003 and quash the same and direct the respondents to refund the petitioner a sum of Rs.9,25,242/- by way of Modvat refund with interest at 18% per annum.

W.P.No.36187 of 2003

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent that has led to the issue of the impugned proceedings in No.S.26/S/PER/RBC/Modvat dated 25.10.2003 and quash the same and direct the respondents to refund the petitioner a sum of Rs.8,69,998/- by way of Modvat refund with interest at 18% per annum.

W.P.No.36188 of 2003

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent that has led to the issue of the impugned proceedings in No.S.26/S/PER/RBC/Modvat dated 25.10.2003 and quash the same and direct the respondents to refund the petitioner a sum of Rs.13,81,220/- by way of Modvat refund with interest at 18% per annum.

For Petitioner : Mr.Jagannathan for
(in all Writ Petitions) Mr.A.Jenesenan

For Respondents : Mr.P.T.Ramkumar
(in all Writ Petitions)

COMMON ORDER

As the issue involved in all the Writ Petitions is one and the same, the cases are taken up for disposal by a common order.

2. The petitioners are engaged in the business of manufacturing Monoblock Broad Gauge Concrete Sleepers and has entered into a rider agreement with the respondent for supply of sleepers to the Railways. According to the petitioner, the respondents have withheld a sum of Rs.9,94,493/- out of the amount payable to the petitioner on the imaginary grounds of non-availment and non-payment of excise duty on escalated costs of inserts.

3. According to the respondents / Railways, the petitioners have made a request of refund of the said amount and based on their request, the second respondent had sought for certain clarifications through proceedings dated 20.06.2003 and the same was clarified by the petitioner on 26.06.2003, that, whatever the amount of MODVAT credit availed by the petitioner, on the basis of 'A' certificate issued from the supplier of inserts, the amount has already been refunded to the Railways and there is no basis for withholding the petitioner's money with the respondents. Even though, a reminder was sent to the respondents on 22.09.2003 regarding the above clarifications, without refunding the amount, an interim order has been passed on 25.10.2003 in the writ petition, which is arbitrary and unreasonable.

4. According to the petitioner, MODVAT accrued on the escalated cost of inserts was neither availed nor passed on to the respondents / Railways. The decision to retain the amount due to the petitioner is illegal and the amount has already been refunded to the Railways, as could be seen from the 'A' certificate. He also submitted that not even a single instance has been shown by the respondents / Railways in the impugned order to prove that 'A' certificate was furnished by inserts manufacturers to sleeper manufacturers.

5. According to the petitioners, the settlement of escalated costs is between the respondents/ Railways and inserts manufacturers and the petitioners have no role to play in the said transaction. The decision taken by the respondents/ Railways is based on self service statement and there is no basis for them to pass an interim order which is especially illegal and arbitrary and it needs interference by this Court.

6. Even though no counter affidavit has been filed by the respondents / Railways, according to the learned counsel for the respondents / Railways, the contract prior to CS-120 provides for reimbursement of MODVAT benefit on inserts to the Railways. The retention of MODVAT per sleeper as provided in the contract is a separate issue and it cannot be clubbed with MODVAT on inserts which inevitably has to be passed on to the Railways. According to the respondents /Railways, MODVAT benefit was neither availed by the petitioner nor it was passed on to the Railways, as it is confirmed by manufacturers of inserts, based on the invoice copies that have been regularly dispatched to the petitioners' office for the purpose of availing MODVAT benefit. The benefit on escalated costs claiming reimbursement of excess MODVAT benefit passed on to the

respondents / Railways cannot be entertained and it has been stated that the question of accepting the bills, produced by the petitioners, does not arise.

7. According to the respondents / Railways, there is a chance for Arbitration and that since detailed investigation is required, and they have no objection for the matter being adjudicated by an Arbitrator, in terms of the agreement, for which the petitioner has no objection. However, the petitioner submitted that a retired Judge of this Court may be appointed as Arbitrator. Learned counsel for the respondents submitted that there are four writ petitions in which the MODVAT benefit is less than Rs.10 lakhs in each case, a retired District Judge may be appointed. The petitioner has also agreed for the appointment of a retired District Judge as Arbitrator.

8. In view of the above, without rendering any finding on the issue raised by both the parties, as that may adversely affect anyone of the parties and that the parties have agreed for appointment of an Arbitrator Mr.C.Manikkam, retired District Judge is appointed as Arbitrator and is expected to adjudicate the matter and pass final award within a period of three months from the date of receipt of a copy of this order. The progress of this case maybe communicated to

the Registry during the first week of April 2018.

9. The Arbitrator is expected to proceed with the matter and complete the case in priority manner since the case is of the year 2003.

12.09.2017

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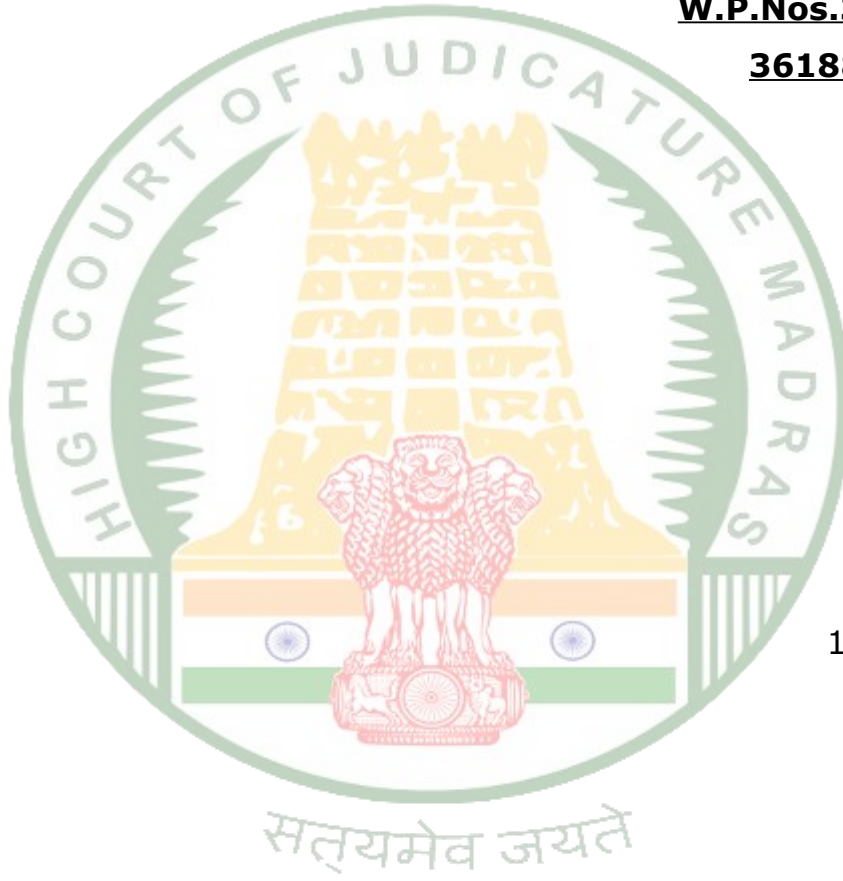
- 1) Mr.C.Manikkam,
Retd., District Judge,
No.22, 1st Floor,
Raj Enclave, Lakshmi Nagar, 6th Street,
Medavakkam, Chennai 600 100
- 2) General Manager,
Indian Railways,
Union of India, Southern Railway,
Chennai 600 023
- 3) Financial Advisor &
Chief Accounts Officer,
Southern Railway,
Chennai 600 023

S.VAIDYANATHAN, J

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Common Order
in
W.P.Nos.36185 to
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