IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.7950 to 7954 of 2017

A.Perumal ...Petitioner
(in W.P.Nos.7950 to 7954 of 2017)

Vs.

The Commercial Tax Officer
Villupuram-1, Villupuram,
Villupuram District.
...Respondent
(in W.P.Nos.7950 to 7954 of 2017)

Prayer:

Writ Petition No. 7950 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent herein to refund the excess payment of tax of Rs.58,377/- relating to the assessment year 2007-08 under TNVAT Act, 2006 as per the request letter made by the petitioner dated 23.01.2015.

Writ Petition No. 7951 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent herein to refund the excess payment of tax of Rs.93,088/- relating to the assessment year 2008-09 under TNVAT Act, 2006 as per the request letter made by the petitioner dated 23.01.2015.

Writ Petition No. 7952 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent herein to refund the excess payment of tax of Rs.67,107/- relating to the assessment year 2009-10 under TNVAT Act, 2006 as per the request letter made by the petitioner dated 23.01.2015.

Writ Petition No. 7953 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent herein to refund the excess payment of tax of Rs.72,411/- relating to the assessment year 2010-11 under TNVAT Act, 2006 as per the request letter made by the petitioner dated 23.01.2015.

Writ Petition No. 7954 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent herein to refund the excess payment of tax of Rs.43,856/- relating to the assessment year 2011-12 under TNVAT Act, 2006 as per the request letter made by the petitioner dated 23.01.2015.

For Petitioner : Mr.S.Rajasekar
For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader (Tax)

COMMON ORDER

In all these writ petitions, the petitioner, who is one and the same, is seeking for a direction to the respondent, to refund the excess payment of tax paid relating to the assessment years 2007-2008 to 2011-2012.

2. The petitioner is a Civil Contractor and an Assessee before the respondent. He was assessed originally for all the above said five assessment years and thereafter, after noticing certain defects, the Assessing Officer passed the orders of revision of assessment on 27.02.2012, 27.02.2012, 28.02.2012, 28.02.2012 and 24.05.2013 respectively. The said orders were passed after issuing notice to the petitioner. In the said revision of assessment, the Assessing Officer found excess payment made by the petitioner as Rs.58,337/- for the assessment year 2007-2008; Rs.93,088/- for the assessment year 2008-2009; Rs.67,107/- for the assessment year 2009-2010; Rs.72,411/- for the assessment year 2010-2011 and Rs.43,856/- for the assessment year 2011-2012. Accordingly, the notice in Form P was also enclosed with the assessment orders. However the excess amount made by the petitioner as found in the assessment orders were not refunded to the petitioner, in spite of his subsequent request made to that effect on 23.01.2015. On the other hand, the Assessing Officer called upon the petitioner to produce the agreement of works contract to refund the excess amount. Therefore, the petitioner has filed the present writ petitions and seeks for refund of the excess amount.

3. The learned counsel appearing for the petitioner submitted that once the assessment orders were passed finding that excess amount is paid by the petitioner, it is the duty of the Assessing Officer to refund the same as provided under Section 42(5) of the Tamil Nadu Value Added Tax Act, 2006. Thus, he contended that the Assessing Officer is not justified in seeking further evidence for making such refund.

4. On the other hand, the learned Additional Government Pleader (Tax) for the respondent, after producing the file before this Court for perusal, submitted that the agreement

copies of works contract were sought for, since audit objection would be raised for refund of such amount without those copies. Therefore, the learned Additional Government Pleader (Tax) submitted that the petitioner can furnish such agreements for the purpose of getting the refund.

5. Heard both sides.

6. It is not in dispute that in respect of the above assessment years, revision orders of assessment were passed on 27.02.2012, 27.02.2012, 28.02.2012, 28.02.2012 and 24.05.2013 respectively. It is an admitted fact that the assessment orders have become final and conclusive. Further the fact remains that under the above said assessment orders, the Assessing Officer found the excess tax payment made by the petitioner, as discussed supra. He has also enclosed a notice in Form P along with the above assessment orders, which is nothing but a notice of assessment of refund order. Therefore it is evident from the orders of assessment and notice enclosed in Form P, that the Assessing Officer has already concluded that the petitioner has made the excess payment. It is seen that the said conclusion has become final and binding on the parties. Therefore, there is no necessity for the petitioner to produce any further evidence for seeking refund of the amount so paid by the petitioner in excess. As rightly pointed out by the learned counsel for the petitioner, the Assessing Officer is bound to refund the excess payment as provided under Section 42(5) of the Tamil Nadu Value Added Tax Act, 2006. Therefore I find that the Assessing Officer is not justified in seeking further evidence for refunding the excess amount so paid.

7. Accordingly, these writ petitions are allowed and the respondent is directed to refund the excess payment made by the petitioner in respect of the above assessment years within a period of four weeks from the date of receipt of a copy of this order. No costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

The Commercial Tax Officer
Villupuram-1, Villupuram,
Villupuram District.

+1 cc to the Special Government Pleader (T) sr 24379
+4 ccs to Mr.R.Hemalatha Advocate sr 24562

W.P.Nos.7950 to 7954 of 2017

lrs(co)
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