IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.9.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NOS.25295 & 25296 OF 2017

M/s.Kanwar Enterprises (P) Ltd.,
Urapakkam, Chennai-603210. ...Petitioner in both the Writ

Vs

1. The Assistant Commissioner (CT),
Tambaram Assessment Circle,
Tambaram, Chennai-45.

2. The Deputy Commissioner (CT),
Zone IX, Commercial Taxes Building
Greams Road, Chennai-6.

3. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-5. ... Respondents in both the Writ

PETITIONS under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus

(i) directing the first respondent to consider the claim of refund as per the notice in Form P and assessment order in TIN No.33410886349/2006-07 dated 23.9.2010 and direct the third respondent to refund this excess amount Rs.3,07,820/- along with interest payable by the third respondent as per Section 42(5) read with Rule 11(1) of Tamil Nadu Value Added Tax Act 2006. (WP.No.25295 of 2017) and

(ii) directing the first respondent to consider the claim of refund as per the notice in Form P and assessment order in TIN No.33410886349/2008-09 dated 21.6.2011 and direct the third respondent to refund this excess amount Rs.9,75,580/- along with interest payable by the third respondent as per Section 42(5) read with Rule 11(1) of Tamil Nadu Value Added Tax Act 2006. (WP.No.25296 of 2017).

For Petitioner : Mr.R.Prabakaran
For Respondents : Mr.K.Venkatesh, GA

C O M M O N   O R D E R

Heard Mr.R.Prabakaran, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice for the respondents. By consent, the writ petitions are taken up for joint disposal.

2. It is an unfortunate case where the petitioner has been compelled to approach this Court for the second time after about five years, as the respondents miserably failed to honour their commitment in effecting refund of the excess tax paid by the petitioner, which has been acknowledged in the assessment orders dated 23.9.2010 and 21.6.2011 respectively for the years 2006-07 and 2008-09 under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

3. In respect of both the assessment years, the petitioner was issued Form P notices wherein it has been clearly stated that the petitioner is entitled for a refund of Rs.3,07,820/- and Rs.9,75,580/- respectively. Since the refund orders were not passed, the petitioner filed W.P.Nos.27338 and 27339 of 2012 to direct the first respondent to effect refund. This Court, by orders dated 06.10.2012, disposed of the said writ petitions by directing the first respondent to consider and dispose of the petitioner's representation within a time frame. However, so far, no orders have been passed by the first respondent. Therefore, this Court would be fully justified in initiating action for contempt against the first respondent.

4. It is seen that subsequently, the petitioner gave representations on 29.10.2012, 22.5.2016 and 08.8.2016. All the three representations were given to the respondents. But unfortunately, the petitioner has not been favoured with any reply even from the first respondent - Assessing Officer. As long as Form P notices remain intact, the petitioner is entitled for refund. On account of the implementation of the Goods and Services Tax Act, the question of adjustment of the said amounts would not arise and the petitioner is entitled for cash refund.

5. It is high time that the third respondent - the Commissioner of Commercial Taxes fixes personal responsibility on the officers, who delay such refund claims. Even when the Assessing Officers are summoned to court for non compliance of directions issued to effect admitted refund of excess tax, the Officers invariably state that their superior officers are yet to approve it. Hence, it is high time for the third respondent to evolve a procedure, by which, individual officers will be personally held liable for delaying such admitted refund claims.

6. The case on hand is one such case where this Court can initiate action for contempt. However, considering the fact that there is a likelihood of the dealer being harassed in the event of initiating action for contempt, this Court is not inclined to do so.

7. In the light of the above, the writ petitions are disposed of with a direction to the first respondent to effect refund of amounts of Rs.3,07,820/- (Rupees three lakhs seven thousand eight hundred and twenty only) and Rs.9,75,580/- (Rupees nine lakhs seventy five thousand five hundred and eighty only) respectively, in full, on or before 26.10.2017, failing which, this Court will be constrained to initiate suo motu proceedings for contempt. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rs

To

1. The Assistant Commissioner (CT),
   Tambaram Assessment Circle,
   Tambaram, Chennai-45.

2. The Deputy Commissioner (CT),
   Zone IX, Commercial Taxes Building
   Gerams Road, Chennai-6.

3. The Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk, Chennai-5.

+2cc to M/s.Bakthasiromani, Advocate, S.R.No.69557

WP.Nos.25295 & 25296 of 2017

SAI(C0)
CS/12/10/17