BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD) Nos.5232, 5233 & 5234 of 2018

Tower Vision,
Represented by its Partner
M.Uma Maheswari, aged about 45 years,
W/o AN.Muthukumar,
No.186, North Veli Street,
Madurai-625 001. ... Petitioner in all W.Ps.

Vs.

1.The Assistant Commissioner (CT),
Nethaji Road Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai, Madurai-625 020.

2.The Commercial Tax Officer,
Nethaji Road Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai, Madurai-625 020.
...Respondents in all W.Ps.

Prayer in W.P.(MD)No.5232 of 2018: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the first respondent to refund the excess tax amount of Rs.80,876/- paid by the petitioner for the assessment year 2008-09 (TNVAT) together with interest @ 6% per annum from 26.05.2015 onwards till the date of refund.

Prayer in W.P.(MD)No.5233 of 2018: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the first respondent to refund the excess tax amount of Rs.72,000/- paid by the petitioner for the assessment year 2009-10 (TNVAT) together with interest @ 6% per annum from 26.05.2015 onwards till the date of refund.

Prayer in W.P.(MD)No.5234 of 2018: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the first respondent to refund the excess tax amount of Rs.58,000/- paid by the petitioner for the assessment year 2012-13 (TNVAT) together with interest @ 6% per annum from 26.05.2015 onwards till the date of refund.

For Petitioner : Mr.B.Rooban,
(in all WPs) For M/s.Rajakarthikeyan.

For Respondents : Mrs.S.Srimathy,
(in all WPs) Special Government Pleader

COMMON ORDER

In all these writ petitions, the writ petitioner succeeded before the First Appellate Authority. However, the Department has preferred further appeals before the Tribunal. As on date, the said appeals are pending before the Tribunal.

2.The case of the writ petitioner is that the order passed by the Appellate Authority has not been stayed or set aside till date. Therefore, he seeks refund of the amount payable to him as a consequence of the appeals having been allowed.

3.The learned standing counsel appearing for the respondent would submit that the appeal before the Tribunal is in continuation of the earlier proceedings and therefore, the question of effecting refund to the petitioner will depend based on the out come of the second appeal pending before the Tribunal.

4.This Court is able to see some force in the submissions of the learned Special Government Pleader. But at the same time, the writ petitioner need not wait indefinitely.

5.The learned counsel appearing for the writ petitioner submitted the post of department member is presently vacant.

6.The writ petitioner cannot suffer for the vacancies in the Tribunal and non-disposal of the appeals filed by the Department. It is the duty of the State to take appropriate steps at the appropriate time to ensure that such vacancies are filled up to ensure the functioning of the Tribunal.

7.If the appeals filed by the Department in these matters are not disposed of within a period of eight months from today, the quantified amount of refund, payable to the writ petitioner, shall be paid immediately with interest at the rate of 6% per annum.

8. With this direction, these writ petitions are disposed of. No costs.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

1.The Assistant Commissioner (CT),
Nethaji Road Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai-625 020.

2.The Commercial Tax Officer,
Nethaji Road Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai-625 020.

+2CC to Mr.B.Rooban, Advocate, SR.No. 54855 & 54857

W.P.(MD) Nos.5232, 5233 & 5234 of 2018

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AM/RSK/SAR 4/19.03.2018/3P/5C