BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.15355 of 2018

M/s.Sri Pandian Industries,
Rep. by its Proprietor,
P.Ganesh Kandasamy : Petitioner

Vs.

The Commercial Tax Officer,
Tallakulam Assessment Circle,
Madurai-20. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondent to give effect to the Appeal order in Appeal No.&Year 95/2016 (TNVAT), dated 31.07.2017 for the assessment year 2011-2012 by passing revised order and to refund the amount of taxes paid in excess along with interest due thereon in accordance with law.

For Petitioner : Mr.R.D.Ganesan
For Respondent : Mr.S.Dhayalan,
Government Advocate

ORDER

The petitioner has come forward with the present Writ Petition seeking for issuance of a Writ of Mandamus, directing the respondent to give effect to the Appeal order in Appeal No.&Year 95/2016 (TNVAT), dated 31.07.2017 for the assessment year 2011-2012 by passing revised order and to refund the amount of taxes paid in excess along with interest due thereon in accordance with law.

2. Mr.S.Dhayalan, learned Government Advocate, takes notice on behalf of the respondent.

3. The petitioner is a manufacturer and seller of metal shells. For the assessment year 2011-2012 (TNVAT), the respondent has determined the total and taxable turnover of Rs.26,56,674/-, vide his order in TIN.No.33154882019/2011-2012, dated 04.03.2016. Against the assessment order, the petitioner has filed an appeal before the Appellate Deputy Commissioner (CT)(FAC), Madurai (North), Madurai, in Appeal No.& Year 95/2016 (TNVAT) and the said appeal was allowed on 31.07.2017. As per Section 42(5) of the Tamil Nadu Value Added Tax Act, 2006 r/w Rule 14(18) of the Tamil Nadu Value Added Tax

Rules, 2007, the order passed in the appeal shall be given effect to by the assessing authority who shall refund without interest within a period of ninety days. Such refund shall be made, if there is no tax arrears due from the dealer to the department. Even though the appellate order was passed as early as on 31.07.2017, it was not given effect to. Aggrieved over the inaction of the respondent, the petitioner is before this Court for a direction to give effect to the order passed by the appellate authority.

4. The learned counsel for the petitioner, in support of his contention, would rely upon the orders passed by this Court in similar circumstances, dated **04.09.2014 in W.P.(MD)No.14672 of 2014 [Kwality Plastic vs. The Assistant Commissioner CT, Karur]**, dated **06.07.2017 in W.P.(MD)No.11260 of 2017 [M/s.Arasan Fertilizers (P) Ltd., vs. The Commercial Tax Officer, Ettayapuram, Tuticorin]**, and dated **18.07.2017 in W.P.(MD)No.13187 of 2017 [M/s.L.G.Shenbagarajan vs. The Assistant Commissioner (CT), Theni].**

5. Following the orders passed by this Court as referred to above, this Court is also inclined to grant the reliefs as prayed for by the petitioner in the present Writ Petition. Accordingly, the respondent is directed to give effect to the order of the Appellate Deputy Commissioner (CT)(FAC), Madurai (North), Madurai, in Appeal No.&Year 95/2016 (TNVAT), dated 31.07.2017, by passing a revised order and refund the amount of taxes paid in excess along with interest due thereon to the petitioner in accordance with law, if there are no legal impediments, within a period of four weeks from the date of receipt of a copy of this order, failing which, the respondent will have to pay interest for the delayed payment.

6. The Writ Petition is, accordingly, ordered. No costs.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The Commercial Tax Officer,
Tallakulam Assessment Circle,
Madurai-20.

+ 1 CC TO Mr.R.D.GANESAN, ADVOCATE IN SR No. 73081
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 73261

SML
TE/SKN-RSK/SAR-2 : 30/07/2018 : 2P/4C

Order made in
W.P(MD)No.15355 of 2018
Dated: 16.07.2018
(2/5)