BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD)No.11260 of 2017

M/s.Arasan Fertilizers (P) Ltd.,
Rep. by its Managing Director,
Mr.Ganesan,
43/4, Harvey Road,
Kadambur,
Tuticorin - 628 714. .. Petitioner

Versus

The Commercial Tax Officer,
Ettayapuram,
Tuticorin. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Mandamus, directing the respondent to give effect to the Tribunal order in M.T.A.No.45 of 2010, dated 01.09.2016, [Assessment year 2004-05] by passing revised order and to refund the amount of taxes paid in excess along with interest as contemplated under Section 24(4) of the TNGST Act.

For Petitioner : Mr.R.D.Ganesan
For Respondent : Mr.R.Karthikeyan
Additional Government Pleader

ORDER

The petitioner has filed the present Writ Petition seeking for issuance of a Writ of Mandamus, directing the respondent to give effect to the Tribunal order in M.T.A.No.45 of 2010, dated 01.09.2016, [Assessment year 2004-05] by passing revised order and to refund the amount of taxes paid in excess along with interest as contemplated under Section 24(4) of the Tamil Nadu General Sales Tax Act.

2.Since the Commercial Tax Officer, Ettayapuram, vide order dated 05.12.2008, has passed a revised order for the assessment year 2004-05 under the Tamil Nadu General Sales Tax Act, determining the total turn over for the assessment year 2004-05 as Rs.86,49,851/- and also determining a taxable turnover as Rs.40,66,046/-, the petitioner filed first appeal before the

Deputy Commissioner [CT] [FAC], Tirunelveli, in A.P.No.16 of 2009, depositing 25% of tax portion of the amount. The said appeal was dismissed. As against that, the petitioner filed second appeal before the Tamil Nadu Sales Tax Appellate Tribunal [Additional Bench], Madurai, in M.T.A.No.45 of 2010, depositing the entire tax amount.

3.After hearing both parties and going through the objections and counter objections raised by them, the Tribunal allowed said appeal on 01.09.2016.

4.Therefore, it is the claim of the petitioner that as per Section 24(4) read with Rule 34 of the Tamil Nadu General Sales Tax Act, the order passed in an appeal shall be given effect to by the assessing authority and any excess amount due to be paid by the dealer, it shall be refunded without interest within three months from the date of communication of the order. But, the respondent has failed to give effect to the second appeal order in M.T.A.No.45 of 2010, dated 01.09.2016, passed by the Tribunal. In spite of repeated communications issued by the petitioner to the respondent to implement the order, no response is forthcoming.

5.The learned counsel for the petitioner relied on an order of this Court in a similar case in W.P.(MD)No.17626 of 2016, dated 21.09.2016 [M/s.Thiagarajar Mills (P) Ltd., Rep. By its Executive Director Vs. The Assistant Commissioner (CT), Thirupparankundram Assessment Circle, Maduari], wherein this Court observed that the excess amount shall be refunded with interest in accordance with Section 24(4) read with Rule 23-A of the Tamil Nadu General Sales Tax Act, 1959 and sought for a similar direction.

6.Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the respondent seeks four weeks time to consider the petitioner's representation and refund the excess amount.

7.Placing on record the submission made by the learned Additional Government Pleader appearing for the respondent, the respondent is hereby directed to give effect to the Tribunal's order and refund the excess amount paid by the petitioner along with interest in terms of Section 24(4) of the Tamil Nadu General Sales Tax Act. It is needless to mention that Form XXXIII as per Rule 23-A filed by the petitioner for claiming interest due under Section 24(4) of the Tamil Nadu General Sales Tax Act can also be considered. It is also made clear that if the respondent fails to implement the orders within a period of two weeks from the date of receipt of a copy of this order, the Department shall pay interest as per law and collect the same from the Officer, for his default in complying with the orders within the time stipulated.

8.With the above directions, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar
/True copy/

Sub Assistant Registrar

To
The Commercial Tax Officer,
Ettayapuram,
Tuticorin.

+1 CC to M/s.R.D.GANESAN, Advocate, SR No. 64129.

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PSM/MR-KKR/SAR4/17.08.2017/3P/3C

W.P.(MD)No.11260 of 2017
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