IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:09.01.2019
CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAN
W.P.No.29437 of 2006

M/s. Asiatic Oxygen Ltd,
No.4, M.T.H.Road,
Padi, Chennai – 600 050.
Rep. by Mr.L.N.Chaturvedi,
Commercial Manager. ... Petitioner

Versus

1.Commercial Tax Officer,
Ambattur Assessment Circle,
5, High Court Colony,
Villivakkam, Chennai 600 049.

2.Commissioner of commercial Taxes,
Ezhilagam, Chepauk, Chennai.

3. State of Tamil Nadu,
Rep. by Secretary to Government,
Secretariat,
Department of Commercial Taxes,
Fort St.George, Chennai – 600 009. ... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 1st respondent to pass an order of refund of the sum of Rs.16,94,827/- together with interest at 1% for every month or as provided under Section 24(4) of the TNGST Act for the period from 15th February 206 to the date of refund.

For Petitioner : Mr. M.P.Senthil Kumar
For Respondents : Mr.M.Hariharan
Addl.Govt.Pleader for R1-R3

O R D E R

The relief sought for in the present writ petition is to direct the first respondent to pass an order of refund of the sum of Rs.16,94,827/- together with interest at 1% for every month or as provided under Section 24(4) of the TNGST Act for the period from 15th February 206 to the date of refund.

2. The learned counsel appearing on behalf of the writ petitioner states that the common order of the Tamil Nadu Sales Tax Appellate Tribunal was passed on 29.08.2002. Thereafter, the High Court passed a common order in respect of the issues raised by the writ petitioner on 04.04.2003. The respondents had given effect to the order of the High Court and accordingly, issued a revised orders of

assessment and the writ petitioner paid the tax as demanded by the Authorities Competent.

3. In view of the fact that, the refund has not been made in favour of the writ petitioner within a period of 90 days. The writ petitioner is entitled for interest as per Section 24 of the TNGST Act. The learned counsel for the writ petitioner further states that the writ petitioner sent several letters to the department on 17.05.2006 and on 02.06.2006 and thereafter. A legal notice was also issued to the Department on 28.06.2006. However, there was no response from the Authorities Competent in respect of the claim of the writ petitioner for refund of the excess amount which is to be paid with the interest on expiry of 90 days from the date of revised orders of assessment.

4. The learned Additional Government Pleader (Taxes) appearing on behalf of the respondent states that the case of the writ petitioner is to be considered only with reference to the document filed by them and in the event of submitting all the relevant papers, the Competent Authorities would be in a position to consider the case of the writ petitioner in respect of his claim for refund of excess tax amount recovered.

5. The learned counsel for the writ petitioner states that the concerned refund order has already been submitted with the Department and several reminders were also sent and a legal notice also issued, inspite of all these efforts, there was no response from the Authorities concerned.

6. This Court is of an opinion that, the Department like Commercial Tax must act vigilantly and prudently. The Department must collect the taxes prudently and so also redress the grievances of the assessees within a reasonable period of time. When it is brought to the notice of this Court that, the writ petitioner had submitted an application for refund of the excess amount as early as on 17.05.2006, no action has been taken. It is painful to pen down that the respondents have not filed the counter in the present writ petition.

7. Appropriate actions are to be initiated against the officials concerned, in this regard by the Commissioner of the Commercial Taxes. When a writ petition is filed by a Company who is an assessee during the year 2006 before this Court, there was no response even after issuance of Rule Nissi by the High Court and no counter has been filed. Thus, the 2nd respondent/Commissioner of Commercial Taxes is directed to conduct an enquiry with regard to the inaction, negligence and dereliction of duty on the part of the officials concerned and initiate suitable disciplinary action against all the officials for their lapses in not filing the counter affidavit in the present writ petition even after a lapse of 12 years.

8. May that it be, the grievances of the writ petitioner is yet to be redressed in accordance with law. The fact remains that, the writ petitioner is eligible to get reimbursement as per the provisions of the Act and a claim is also made by the petitioner long back during the year 2006. Accordingly, the first respondent is directed to consider the claim of the writ petitioner and issue refund if the writ petitioner is otherwise eligible in accordance with law and pass orders on merits and in accordance with law within a period of 4 weeks from the date of receipt of the order.

9. The writ petitioner is directed to enclose the copy of the applications and relevant documents if any along with the order passed in the present writ petition. Accordingly, the writ petition stands disposed of. No Costs.

Sd/-
Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

Pkn
To
1.The Commercial Tax Officer,
Ambattur Assessment Circle,
5, High Court Colony,
Villivakkam, Chennai 600 049.

2.The Commissioner of commercial Taxes,
Ezhilagam, Chepauk, Chennai.

3. The Secretary,
State of Tamil Nadu,
Secretariat,
Department of Commercial Taxes,
Fort St.George, Chennai - 600 009.

+1cc to M/s.Mallika Srinivasan , Advocate SR.No. 2831
+1 CC TO GOVERNMENT PLEADER SR.NO. 3501

W.P.No.29437 of 2006

A.SK(07/02/2019)