IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

WRIT PETITION NO.13194 OF 2010

M/s.Murugan & Co.
Represented by its Partner,
Mr.Pandian, 59, M.P.Koil Street,
Bhuvanagiri- 608 601 ... Petitioner

Vs

1. The Commissioner of Income Tax
D.P.Thottam, M.G.Road,
Pondicherry- 605003.

2. The Income-tax Officer,
Ward I(3), Cuddalore. ... Respondents

Prayer:

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari to call for records of the first respondent in C.No.9106(34)/CIT/PDY/2009-10 dated 29.09.2009 and quash the same and further direct the first respondent to grant refund as claimed by the petitioner in its return of income for the Asssessment Year 1989-1990.

For Petitioner : Mr.N.Quadir Hoseyn

For Respondents : Mr.A.P.Srinivas (R1)
Senior Standing Counsel
W.P. dismissed as against R2
vide order dated 23.02.2011

O R D E R

The Petitioner challenges an order of the Commissioner of Income Tax ('CIT') dated 29.09.2009 rejecting its request for refund of excess amount of Tax Deducted at Source in terms of the provision of the Income Tax Act ('Act').

2. Initially, the request of the petitioner appears to have been considered favourably vide Memorandum of the CIT dated 10.02.2000, wherein the CIT states that the proposal under Section 119 (2) (b) of the Act was approved and the Assessing Officer should proceed to issue a refund. Subsequently, the petitioner appears to have followed the matter up for refund with the authorities. However, the same was not forthcoming and was ultimately rejected by the CIT under the impugned order.

3. The standing counsel for the Department relies upon Circular No.670 dated 26.10.1993 that requires the officer to obtain prior approval from the Chief Commissioner of Income-Tax or Director General of Income-tax if the amount of refund exceeds Rs.10,000/- before entertaining a belated refund claim.

4. Though in the present case the claim is above the stipulated amount, the original Memorandum dated 10.02.2000 is active presently and has not been withdrawn or cancelled. The second respondent states in counter (filed on 25.02.2015 after the writ petition has been dismissed by this Court on 23.02.2011 as against R2) that order dated 10.02.2000 has been withdrawn on 29.02.2000. However, no records have been produced to substantiate this statement despite a specific query in this regard.

5. In light of the discussion as aforesaid, this Writ Petition stands allowed and the impugned order dated 15.10.2009 is set aside. The Commissioner of Income Tax shall consider the claim of the petitioner bearing in mind that the petitioner has been diligent in pursuing the refund since 11.06.1992 and the Department has also once accepted his request. Let the petitioner appear before the Commissioner of Income Tax on 05.12.2019 to put forth his case without expecting further notice in this regard, and let necessary orders be passed by the CIT within a period of two weeks from date of conclusion of the personal hearing.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

arr

To

1. The Commissioner of Income TAx
   D.P.Thottam, M.G.Road,
   Pondicherry- 605003.

2. The Income-tax Officer,
   Ward I(3), Cuddalore.

3. Mr.Pandian Partner,
   M/s.Murugan & Co,
   59, M.P.Koil Street,
   Bhuvanagiri- 608 601.

+1cc to Mr.N.Quadir Hoseyn, Advocate, S.R.No.98493
+1cc to Mr.A.P.Srinivas, Standing Counsel Advocate, S.R.No.98629

Writ Petition No.13194 of 2010

GJ(CO)
CS/04/12/2019