IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.10.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.33863 of 2019

Essar Steel India Limited,
Rep. by its Authorized Signatory,
H.Ramaswamy,
No.A-6, SIPCOT Industrial Growth Center,
Sriperambadur – 602 112. ... Petitioner

Vs

1.Deputy Commissioner (ST)-II,
Large Tax Payers Unit,
Dugar Tower,
Marshall Road, Egmore,
Chennai-600 008.

2.Joint Commissioner (ST),
Large Tax Payers Unit,
Dugar Tower,
Marshall Road, Egmore,
Chennai-600 008. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the first respondent passed in RC.427/2019/B2 dated 15.10.2019 and quash the same as the impugned proceedings of the first respondent is unsustainable in law and further direct the first respondent to quantify the interest payable under section 42(5) of the TNVAT Act 2006 for the delayed payment of refund of tax amount of Rs.3,05,12,852/-.

For Petitioner : Mr.N.Murali

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

O R D E R

The petitioner is an assessee under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act') and Central Sales Tax Act, 1956 (in short 'CST Act'). The proceedings for assessment under the CST Act were finalised by the assessing authority for the periods 2010-11, 2011-12, 2013-14 to 2016-17. Assessments were framed by the assessing authorities that were carried in appeal before the Appellate Assistant Commissioner.

2.The appellate orders remanded the matters to the file of the assessing authority and on remand, orders had been passed by the assessing authority on 09.12.2015 (2010-11), 22.07.2014 (2011-12), 17.01.2018 (2013-14, 2014-15 & 2015-16) and 23.03.2018 (2016-17). Admittedly, the aforesaid orders determined refunds that were payable to the petitioner.

3.Despite requests for pay over the refund, no action was taken by the respondents, as a result the petitioner had moved writ petition before this Court seeking a mandamus for refund. Pending the writ petitions, refund vouchers dated 14.06.2019 came to be issued by the respondents on the basis of which those writ petitions were closed as withdrawn by order dated 20.06.2019. The refunds were credited to the accounts of the petitioner on 27.06.2019.

4.The petitioner thereafter made a representation on 07.08.2019 seeking interest under Section 42(5) of the Act. The request for interest has come to be rejected by the officer on the ground that (i) there was a delay in the petitioner coming to receive the refund orders and that (ii) there were arrears that were due to be paid in respect of the CST assessments for various years and the petitioner had agreed for adjustment of arrears as against the refunds payable, only on 11.06.2019.

5.Thus, the curious argument that is taken is that since the petitioner had acceded to the adjustment belatedly, the refund could be issued only thereafter. It is as against the aforesaid rejection order, the present writ petition has been filed. The provisions of Section 42 deal with payment and recovery of tax, penalty, etc. and sub Section (5) reads as follows:

> ***'42. Payment and recovery of tax, penalty, etc.***
> ....
> *(5) Where the tax paid under this Act is found to be in excess on assessment or revision of assessment, or as a result of an order passed in appeal, revision or review, the excess amount shall be*

refunded to the dealer after adjustment of arrears of tax, if any, due from him. Where the excess amount is not refunded to the dealer within a period of ninety days from the date of the order of assessment or revision of assessment and in the case of order passed in appeal, revision or review within a period of ninety days from the date of order giving effect to such order passed in appeal, revision or review, the Government shall pay by way of interest, where the amount refundable is not less than one hundred rupees, a sum equal to a sum calculated at the rate of half per cent or part thereof of such amount for each month or part thereof after the expiry of the said period of ninety days.'

6.A plain reading of the provision makes it clear that where the refund is issued beyond a period of ninety days from the date of order of assessment/revision of assessment or, appeal, revision or review, the State is liable to pay interest equal to a sum calculated at the rate of half per cent or part thereof for each month or part thereof.

7.The first argument made by revenue counsel is that the period of ninety days would run only from the date of refund orders, being 14.06.2019. This rejection is evidently contrary to the stipulation under Section 42(5) as per which, the computation of ninety days is from date of order giving rise to the refund. In the present case, the dates of orders giving rise to the refunds have been captured at paragraph 2 supra, and thus delay is established without question.

8.The second argument in the impugned order is that there was a delay on the part of the assessee in receiving the refund vouchers. This is also irrelevant apart from being contrary to the statutory mandate under Section 42(5). The third argument relates to the adjustment of arrears. It is the discretion of the assessing authority as to whether the pending arrears are to be adjusted against the refund. Prudence dictates, and in reality, there is never an instance when the assessing authority awaits the consent or permission of an assessee for such adjustment. Thus, it does not lie in the mouth of the assessing authority to state that he was awaiting the permission of the assessee for adjustment of arrears.

9.That apart, even if courtesy of awaiting permission is extended to an assessee, such courtesy will not have the effect of extending the statutory period of ninety days as set out under Section 42(5) of the Act. Any delay over and above ninety days would automatically render the State liable to pay interest.

10.The impugned order dated 15.10.2019 is thus set aside in light of the discussion above. Interest shall be computed from 90 days from the date of the order quantify the refunds being on 09.12.2015 (2010-11), 22.07.2014 (2011-12), 17.01.2018 (2013-14, 2014-15 & 2015-16) and 23.03.2018 (2016-17) till date of payment, and paid over to the assessee within a period of four (4) weeks from today. This writ petition is allowed in the above terms. No costs.

12.10.2022

vs
Index : Yes
Speaking Order

To

1.Deputy Commissioner (ST)-II,
Large Tax Payers Unit,
Dugar Tower,
Marshall Road, Egmore,
Chennai-600 008.

2.Joint Commissioner (ST),
Large Tax Payers Unit,
Dugar Tower,
Marshall Road, Egmore,
Chennai-600 008.

DR.ANITA SUMANTH, J.

vs

W.P.No.33863 of 2019

12.10.2022