IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.No.36196 of 2015 &
M.P.Nos. 1 & 2 of 2015

M/s Diana Hotel
rep. by its Managing Partner A.Jesudass .. Petitioner

-Vs-

1.The Commercial Taxj Officer
(Enforcement), Roving Squad
Commercial Taxes Building
Dr.Balasundaram Road
Ram Nagar, Coimbatore 641 018.

2.The Deputy Commercial Tax Officer
Ram Nagar Circle
Commercial Taxes Building
Dr.Balasundaram Road
Ram Nagar, Coimbatore 641 018.

3.The Assistant Commissioner (CT) FAC)
Ram Nagar Assessment Circle
Commercial Taxes Building
Dr.Balasundaram Road
Ram Nagar, Coimbatore 641 018.

.. Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Prohibition to prohibit the authorities i.e. respondents 1 & 2 from formulating any proposal for the purpose of assessment/re-assessment by the third respondent based on the unauthorised audit conducted at the business premises of the petitioner on 26.09.2015 as illegal, contrary to section 64(4) of the TNVAT Act. .

For Petitioner : Mr.S.Ganesh

For Respondents : Mr.K.Venkatesh
Government Advocate

ORDER

Heard Mr.S.Ganesh, learned Counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate, who has accepted notice on behalf of the respondents. With the consent of the learned counsel appearing on either side, the Writ Petition itself is taken up for disposal.

2.The petitioner is a Lodging House, registered as dealer on the file of the third respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act]. In this Writ Petition, the petitioner seeks for a writ prohibition to prohibit the authorities namely respondents 1 & 2 from formulating any proposal for the purpose of assessment by the third respondent based on the unauthorised audit conducted at the business premises of the petitioner on 26.09.2015.

3.The learned counsel for the petitioner submits that the audit conducted in the place of business of the petitioner is unauthorised, because the same is not duly authorised by the Commissioner as required under sub-section

(4) of section 64 of the TNVAT Act. However, to justify the said contention, the respondents have not produced any documents or the order of the Commissioner, nor filed any counter affidavit.

4.When identical issue came up for consideration before this Court in the case of *M/s Arkema Peroxides India Pvt. Ltd., V. The Joint Commissioner (CT) and 3 ors [w.p.nO.7564 OF 2015 DT 18.03.2015],* the Court accepted the said contention raised by the dealer therein and allowed the Writ Petition. Similar issues are also pending before this Court and orders of stay have been granted in those cases. It appears that during the said VAT Audit, cheques were collected from the petitioner and those cheques were ordered to be returned by this Court by passing an order on 06.11.2015, stating that the action of the Enforcement Wing in collecting cheques from the dealers, as if those cheques were for Advance Tax, is illegal.

5.After making the above submissions, the learned counsel would submit that the third respondent may be directed to consider the petitioner's representation dated 20.10.2015 and accordingly proceed with the assessment, since the petitioner's returns which were 'Nil' returns have been accepted by the third respondent for all the assessment years prior to VAT Audit.

6.In the light of the above, the third respondent is directed to consider the petitioner's representation dated 20.10.2015, afford an opportunity of personal hearing and take a proper decision in accordance with law and not solely be guided on the report that might have been submitted by the Audit Wing, in the light of the fact that the petitioner has stated that the audit itself is unauthorised as it has not been authorised by the Commissioner, as required under sub-section (4) of section 64 of the TNVAT Act.

The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

06.10.2016

RPA
To

1.The Commercial Taxj Officer
(Enforcement), Roving Squad
Commercial Taxes Building
Dr.Balasundaram Road
Ram Nagar, Coimbatore 641 018.
2.The Deputy Commercial Tax Officer
Ram Nagar Circle
Commercial Taxes Building
Dr.Balasundaram Road
Ram Nagar, Coimbatore 641 018.
3.The Assistant Commissioner (CT) FAC)
Ram Nagar Assessment Circle
Commercial Taxes Building
Dr.Balasundaram Road
Ram Nagar, Coimbatore 641 018.

T.S.SIVAGNANAM, J.

RPA

W.P.NO.36196 of 2015

06.10.2016