IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.36071 of 2016 & W.M.P.Nos.30996 to 30998 of 2016

and

W.P.No.36072 of 2016 & W.M.P.Nos.30999 to 31001 of 2016

Tata Sky Limited,
Represented by its Assistant General Manager
Mr.A.Magesh Prasath,
1st Floor, SYMTEC, Floor No.5,
3rd Phase, Ekkaduthangal,
Chennai-32. .. Petitioner in both Writ Petitions

Versus

1.The State of Tamil Nadu,
Represented by the Secretary,
Commercial Taxes and Registration Department,
St. George Fort,
Chennai.

2.The Assistant Commissioner (CT),
Chepauk Assessment Circle,
Chennai-600 006.

3.The Branch Manager,
HDFC Bank Limited,
Marshal Annexe,
Soorji Vallabhdas Marg,
Ballard Estate, Mumbai,
Maharashtra-400 001. .. Respondents in both Writ Petitions

Prayer in both Writ Petitions: These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records relating to FORM-RR issued by the respondent No.2 bearing reference No.TIN:33100561230/2007-08 and 2008-09, respectively, dated 27.06.2016 and quash the same as illegal and invalid and consequently direct the respondent No.2 not to impose interest on demand till the disposal of Appeals preferred by the petitioner before Deputy Commissioner (Appeal) for the financial year 2007-08.

For Petitioner in
both Writ Petitions : Mr.A.K.Rajaraman

For 1st and 2nd
Respondents in
both Writ Petitions : Mr.K.Venkatesh
Government Advocate (Taxes)

C O M M O N   O R D E R

Heard Mr.A.K.Rajaraman, learned counsel appearing for the petitioner in both Writ Petitions and Mr.K.Venkatesh, learned Government Advocate (Taxes), accepting notice on behalf of respondents 1 and 2 in both Writ Petitions. With the consent of the learned counsel on either side, these Writ Petitions are taken up for disposal.

2. The petitioner has filed these Writ Petitions to quash the notice issued by the second respondent in Form RR, dated 27.06.2016, by which a demand has been raised for interest under Section 42(3) of the Tamil Nadu Value Added Tax Act 2006 (hereinafter referred to as the "TNVAT Act"). On receipt of the impugned notice, the petitioner submitted a reply on 22.08.2016, pointing out that the Appeal has been preferred before the Appellate Deputy Commissioner (CT), IV (FAC) in A.P.VAT No.32 of 2013 and it was also brought to the notice of the respondent that an order of stay has been granted in S.P.No.31 of 2013, dated 01.04.2013, subject to certain conditions, which has been complied with by the petitioner.

3. Further, the petitioner brought to the notice of the respondent the proviso under Section 42(3) of the TNVAT Act, stating that a demand for interest should be postponed till the disposal of the Appeal. Though the respondent received this communication on 30.08.2016, as could be seen from the Endorsement in the Letter Delivery Book, he parallely intimated to the petitioner's Banker viz., the third respondent and attached the petitioner's Bank account. Therefore, the petitioner is before this Court.

4. The Assessing Officer, who issued the impugned notice is stated to have been transferred and the new incumbent, taken over charge as the second respondent, is present in Court and he is unable to deny the fact that the Appeal as against the Assessment Order is pending and order of stay is in force. That apart, there is no answer on the part of second respondent as regards the effect of the proviso under Section 42(3) of the Act, which reads as follows:-

> "Provided further that where a dealer or person has preferred an appeal or revision against any order of assessment or revision of assessment under this Act, the interest payable under this sub-section, in respect of the amount in dispute in the appeal or revision, shall be postponed till the disposal of the appeal or revision, as the case may be, and shall be calculated on the amount that becomes due in accordance with the final order passed on the appeal or revision as if such amount had been specified in the order of assessment or revision of assessment or revision as the case may be."

5. In the light of the above, the impugned notices dated 27.06.2016, are wholly without jurisdiction and illegal. Accordingly, these Writ Petitions are allowed and the impugned notices are quashed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Secretary,
Government of Tamil Nadu,
Commercial Taxes and Registration Department,
St. George Fort,
Chennai.

2.The Assistant Commissioner (CT),
Chepauk Assessment Circle,
Chennai-600 006.

+1 CC to R. Sethish Kumar, Sr.No.59414

W.P.No.36071 of 2016 &
W.P.No.36072 of 2016

MD : 21/10/2016