IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.07.2017

CORAM
THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
W.P.No.4447 of 2017

Tvl.Teemage Builders Pvt Lts,
Rep., by its Account Manager,
3/156, Kovai Main Road, Olapalayam,
Kangeyam -638 701 ... Petitioner

Vs

The Joint Commissioner of Commercial Taxes,
Enforcement,
Coimbatore.
...Respondent

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondent to refund, with consequential relief, an amount of Rs.1,24,98,354/- paid by the petitioner vide Cheques bearing numbers 895771, 895772 and 895774 drawn at Indian Bank given under cover of letter dated 26/11/2014.

For Petitioner : M/s.Adithya Reddy

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

ORDER

Heard Mr.Adithya Reddy, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader. With the consent on either side, the writ petition itself is taken up for final disposal.

2. The Writ Petition has been filed by the petitioner, dealer, for direction upon the respondent to refund the amount of Rs.1,24,98,354/- collected from the petitioner by way of 3 cheques, during the time of surprise inspection. The Court by order dated 22.02.2017, recorded the submissions of the petitioner that the amount which has been collected from the petitioner may be returned in its entirety or adjusted towards

tax liability for future assessment years and this is without prejudice to the petitioner's rights and contentions, while contesting the assessment order dated 13.02.2017.

3. The learned counsel for the petitioner pointed out that the cheques were collected after recording a statement from the authorised signatory of the petitioner on 26.11.2014, which pertained to four assessment years namely, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 (upto October 2014). The respondent Assessing Officer has conveniently not issued notices nor completed the assessment for the years 2013-2014 and 2014-2015, but has issued final assessment orders only for the years 2011-2012 and 2012-2013, as against which the petitioner has filed appeals. The Court has repeatedly held that the enforcement officers are not entitled to collect cheques from the dealer, as if, it is an advance tax.

4. In the instant case, that was preciously done by the enforcement wing. However, having done so, the respondent Assessing Officer cannot keep the final assessment proceedings for the relevant year pending, as the bulk of the amount is sought to be adjusted in respect of those two years, namely, 2013-2014 and 2014-2015.

5. Accordingly, the Writ Petition stands disposed of, by directing the respondent, to issue notices to the petitioner for the assessment years 2013-2014 and 2014-2015, afford an opportunity of personal hearing to the petitioner, verify all the documents and records have been produced and pass final assessment orders, within a period of eight weeks from the date of receipt of a copy of this order. On such orders being passed, it is open to the respondent to adjust the amount collected by way of cheques as against the tax dues, if any, for all the four assessment years. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

pbn

To

1.The Joint Commissioner of Commercial Taxes,
Enforcement,
Coimbatore.

+1 cc to Mr.Adithya Reddy Advocate sr 46175
+1 cc to the Government Pleader sr 46228

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