IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.18806 & 18807 of 2017
and W.M.P.No.20329 of 2017

M/s.Enmas Andritz Private Limited,
rep. by its Director, Mr.N.Soundrapandian,
VI Floor, Guna Building Annexe,
443, Anna Salai, Teynampet,
Chennai-600 018. ... Petitioner in both W.Ps.

Vs.

1.Deputy Commissioner of Income Tax,
Corporate Circle – 2(1),
121, Nungambakkam High Road,
Chennai-600 034.

2.The Deputy Commissioner of
Income tax, Circle-1,
No.44, Williams Road, Cantonment,
Trichy-620 001. ... Respondents in both W.Ps.

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Prayer in W.P.No.18806 of 2017 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Prohibition, to forbear the first respondent from appropriating the refund due to the petitioner pursuant to the notice under Section 226(3) of the Income Tax Act dated 12.01.2017, issued by the second respondent.

http://www.judis.nic.in

Prayer in W.P.No.18807 of 2017 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to direct the first respondent to consider the representation dated 20.01.2017 in PAN : AAACE9839N and grant refund.

For Petitioner : Mr.R.Venkatanarayanan
for Mr.Subbaraya Aiyarpadmanabhan

For Respondents : Mr.A.N.R.Jayaprathap

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COMMON ORDER

Heard Mr.R.Venkatanarayanan, learned counsel for Mr.Subbaraya Aiyarpadmanabhan, learned counsel for the petitioner and Mr.A.N.R.Jayaprathap, learned counsel for the respondents. With consent on either side, these writ petitions are taken up for final disposal.

2.The petitioner has filed W.P.No.18806 of 2017 to forbear the first respondent from proceeding further pursuant to the notice dated 12.01.2017, issued under Section 226(3) of the Income Tax Act, 1961. In W.P.No.18807 of 2017, the petitioner prays for a direction upon the first respondent to consider his representation dated 20.01.2017, wherein the petitioner has claimed refund of the excise

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income tax paid by the petitioner for the assessment years 2012-13, 2013-14 and 2014-15. The petitioner in the said representation has also stated as to how their claim for refund is justified. This representation has been received in the office of the first respondent on 25.01.2017, and the matter is now pending.

3.In the meantime, the second respondent, who is the assessing officer of M/s.Resurgent Investments Pvt. Ltd., has issued the impugned notice stating that a sum of Rs.4,56,33,973/- is due as income tax from M/s.Resurgent Investments Pvt. Ltd., for the assessment years 2011-12 to 2013-14 and directed the petitioner to pay the said amount. It has not been denied in the counter affidavit that the request made by the petitioner for refund is yet to be considered. However, in the counter affidavit, the officer has taken a stand that the petitioner will not be put to any loss and the notice was issued bearing in mind the national interest to recover the statutory dues.

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4.In my considered view, the notice dated 12.01.2017, is premature, since there is nothing on record to state that the refund claim made by the petitioner has crystallized into an order of refund.

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Thus, the impugned notice has virtually prejudged the matter and could not have been issued before a decision has been taken by the first respondent on the petitioner's request for refund.

5.Thus, for the above reasons, the notice dated 12.01.2017, issued by the second respondent is held to be unenforceable as it is premature, giving liberty to the second respondent to initiate fresh proceedings after an order is passed by the first respondent on the petitioner's representation for refund dated 20.01.2017. The first respondent is directed to consider the representation of the petitioner dated 20.01.2017, within a period of six weeks from the date of receipt of a copy of this order, after affording an opportunity of personal hearing to the petitioner's authorized representative.

These writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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05.12.2017

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Index:Yes/No

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