IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2018

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.5316 of 2017 &
WMP.No.5639 of 2017

Sri Aishwarya Constructions
Rep.by its Managing Partner
Mr.K.Lakshmipathy .. Petitioner

v.

1. The State of Tamil Nadu
   Rep. By the Secretary to Government
   Commercial Taxes Department
   Fort St.George, Chennai.

2. The Commercial Tax Officer
   Panruti Rural Circle, Panruti.

3. The Assistant Commissioner (CT)
   Tanjore Circle, Tanjore.

4. The Assistant Commissioner (CT)
   Tallakulam Circle, Madurai.

5. The Assistant Commissioner (CT)
   Perur Circle, Coimbatore.

6. M/s.Oriental Bank of Commerce
   Rep. By its Branch Manager
   Andalpuram Branch, Madurai.

7. M/s. State Bank of India
   Rep.by its Branch Manager
   Neyveli Main Branch
   Block -2
   Neyveli, Cuddalore District.

8. The Sub Registrar
   Vadalur,
   Cuddalore District. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of declaration, declaring the action of the 2nd respondent in not giving credit to the Tax Deducted at Source amounts lying to the credit of the petitioner with the respondents 3 to 5 and taking coercive action to collect the tax from the petitioner as illegal and consequently direct the 2nd respondent to credit the TDS amounts lying on account of the petitioner, adjust the same and refund the balance amount due to the petitioner in accordance with law.

For Petitioner : Mr.T.Sai krishnan
for M/s.Sai Bharathi and Ilan

For Respondents : Ms.G.Dhana Madhri
Government Advocate for R1 to R5
M/s.R.Prathap Singh, for R8

ORDER

Heard Mr.T.Sai krishnan, learned counsel appearing for the petitioner and Ms.G.Dhana Madhri, Government Advocate appearing for the respondents 1 to 5.

2. This writ petition has been filed to declare action of the 2nd respondent in not giving credit to the Tax Deducted at Source amounts lying to the credit of the petitioner with the respondents 3 to 5 and taking coercive action to collect the tax from the petitioner as illegal and consequently to direct the 2nd respondent to credit the TDS amounts lying on account of the petitioner, adjust the same and refund the same.

3. From the counter affidavit filed by the 2nd respondent it is evident that the 2nd respondent does not dispute the fact that the tax deducted at source is lying to the credit of the petitioner, but, not paid to him but before with the other Assessing Officer.

3. The petitioner is a contractor and performing construction activities on contract basis for public sector and private sector undertakings including industrial constructions etc., and whenever work has been done, payments have been effected and tax has been deducted at source and remitted to the 2nd respondent. Thus, the case of the petitioner is that tax has been deducted at source and necessary documents have been placed before the 2nd respondent, who is the Assessing Officer. However, the 2nd respondent did not take any action by issuing a direction to the Banks to credit the amount to the petitioner's account. Therefore, it would be illegal and untenable to initiate coercive action against the petitioner for no default committed by him.

4. In view of the above, the 2nd respondent is restrained from initiating any coercive action against the petitioner and a direction is issued to the 2nd respondent to address the respondents 3 to 5 for transfer of the TDS amount which are lying with them and transfer the same and upon transfer give due credit to the petitioner's account and pass orders, in accordance with law. The 2nd respondent is also directed to afford an opportunity of personal hearing to the petitioner before orders are passed.

With the above directions, this writ petition is disposed of . No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Rj

To

1. The Secretary to Government
   Commercial Taxes Department
   Fort St.George, Chennai.

2. The Commercial Tax Officer
   Panruti Rural Circle, Panruti.

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   Tanjore Circle, Tanjore.

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5. The Assistant Commissioner (CT)
   Perur Circle, Coimbatore.

6. The Sub Registrar
   Vadalur,
   Cuddalore District.

+1cc to M/s.Sai Bharath & Ilan, Advocate Sr.NO.42005
1cc to Government Pleader SR.No.42026

CP(CO)
sm:17.7.2018