

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2018

CORAM

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.6641 of 2018 &

W.M.P. Nos.8236 to 8238 of 2018

Diebold Systems (P) Ltd.
Represented by its Mr.Radji Velu
Assisant Manager
No.28/3, Montieth Road
Egmore
Chennai - 600 008 ...Petitioner

v.

The Assistant Commissioner (CT) FAC)
Egmore Assessment Circle
No.88, Mayor Ramanathan Salai
Chennai - 600 031 ...Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the Assessment Order CST No.615254/2013-2014 dated 30.06.2017 and the consequential Notice TIN No.33020440800/A3, dated 08.02.2018 issued by the respondent and to quash both as arbitrary and illegal and direct the respondent to refund the amount of Rs.1,49,25,064/-.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.M.Hariharan
Addl. Govt. Pleader (T)

ORDER

Heard Mr.Joseph Prabakar, learned counsel appearing for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader accepting notice for the respondent. By

consent, the writ petition itself is taken up for final disposal.

2. The petitioner is before this court challenging the notice dated 08.02.2018 issued by the respondent directing the petitioner to pay a sum of Rs.1,49,25,064/- being the amount payable pursuant to an order of assessment under the provisions of Central Sales Tax Act, 1956 for the assessment year 2013-14.

3. Admittedly, the petitioner has a remedy of filing an appeal before the Appellate Deputy Commissioner (ST), Chennai Central and there is a period of limitation prescribed under the Act for preferring an appeal. Accordingly, the petitioner preferred an appeal and sought for stay of the demand. The Appellate Authority, by an order dated 07.03.2017, directed the petitioner to pay a sum of Rs.49,75,000/- being 25% of the disputed tax and the balance amount of Rs.99,50,064/- was directed to be secured in the form of Bank Guarantee. However, prior to the communication of the stay order passed by the Appellate Authority, the respondent has recovered the entire amount of Rs.1,49,25,064/- from the petitioner's bank. With these facts the petitioner has approached this court requesting for appropriate direction to retain a sum of Rs.49,75,000/- and refund the balance amount.

4. Though the order of stay has been communicated, subsequently the respondent/Assessing Officer, being Subordinate Officer to the Appellate Authority, is bound by the order of stay. Therefore, the writ petition is disposed of directing the respondent to retain a sum of Rs.49,75,000/- and refund the balance amount of Rs.99,50,064/- to the petitioner by way of Demand Draft. It is to be pointed out that the Demand Draft was deposited by the respondent for encashment only after the stay order was granted i.e. on 15.03.2018. The refund shall be effected within a period of two weeks, from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

-Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

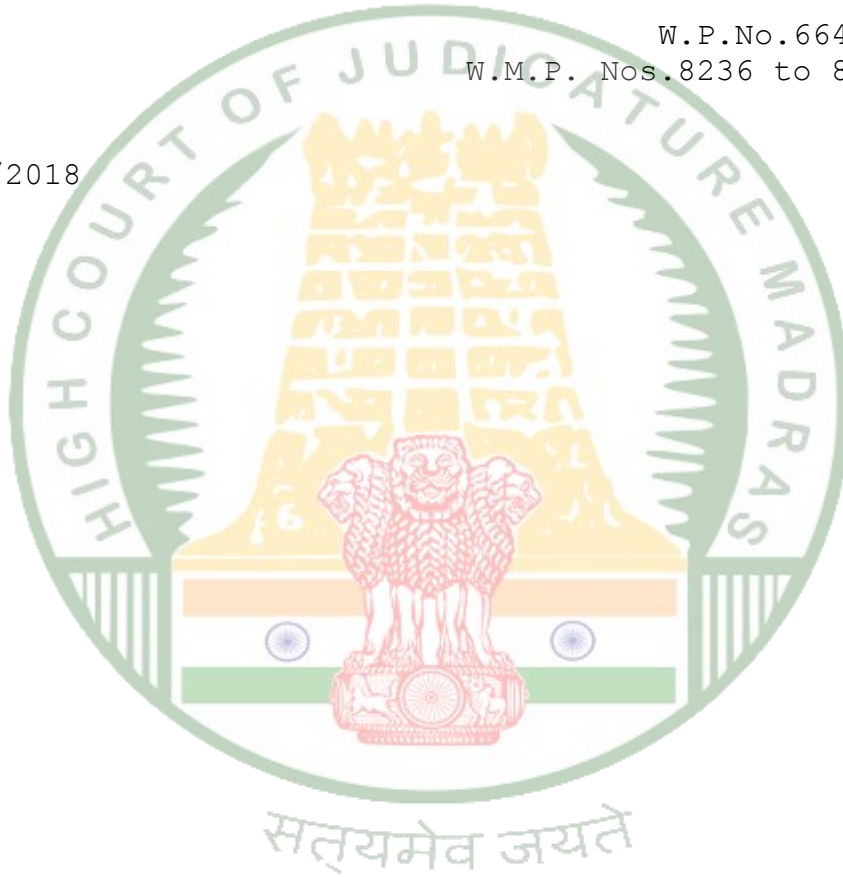
The Assistant Commissioner (CT) FAC)
Egmore Assessment Circle
No.88, Mayor Ramanathan Salai
Chennai - 600 031

- 1 cc to Mr.Joseph Prabhakar, Advocate Sr.No.25758
- 1 cc to The Special Government Pleader Sr.No.260198

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LRS (CO)

RRI 18/04/2018



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