IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 09.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.11215 to 11218 of 2018

M/s.Oriental Cuisines Pvt Ltd.
Represented by its Authorized Signatory
Mr.Ramanarayanan
Having its office at
No.74, Cathedral Road
Chennai - 600 086. .. Petitioner in all W.Ps'

Versus

The Assistant Commissioner
Office of the Assistant Commissioner (ST)
Royapettah Assessment Circle
Chennai - 600 028. .. Respondent in all W.Ps'

These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondent to refund a sum of Rs.15,48,366/-, Rs.44,60,124/-, Rs.90,27,810/- and Rs.1,23,13,068/- to the petitioner for the assessment years 2010-2011, 2011-2012, 2012-2013 and 2013-2014 respectively.

For Petitioner : Mr.S.Vijayan Subramanian
(In all W.Ps')

For Respondent : Ms.G.Dhana Madhri
(in all W.Ps') Government Advocate

COMMON ORDER

Heard Mr.S.Vijayan Subramanian, learned counsel appearing for the petitioner and Ms.G.Dhana Madhri, learned Government Advocate appearing for the respondent.

2. The petitioner seeks for a direction upon the respondent to refund the sum of Rs.15,48,366/-, Rs.44,60,124/-, Rs.90,27,810/- and Rs.1,23,13,068/-, which were paid by the petitioner for the assessment years 2010-2011, 2011-2012, 2012-2013 and 2013-2014 respectively, as a condition for preferring an appeal before the Appellate Deputy Commissioner (CT) (East), Chennai.

3. It is not disputed by the Revenue that the appeal filed by the assessee has been partly allowed and the matter has

been remanded to the Assessing Officer for consideration. So far as setting side the penalty is concerned, the Revenue is on an appeal to the Tamil Nadu Sales Tax Appellate Tribunal. However, the larger issue is whether the petitioner can be taxed for selling branded foods or not. This is pending before the Division Bench.

4. Considering the above facts, the respondent cannot, any further, retain the amount, which were made as a pre-deposit as a condition precedent for filing an appeal.

5. The learned counsel for the petitioner submits that already the bank guarantee furnished by the petitioner have been returned and acknowledged.

6. In the light of the above, these writ petitions are allowed as prayed for and the respondent is directed to refund the amount paid by the petitioner for each of the assessment years, as indicated above, within a period of three weeks from the date of receipt of a copy of this order. It is made clear that this order will not in any manner impinge upon the proceedings now remanded to the Assessing Officer for fresh consideration or the appeal, which is pending at the instance of the Revenue before the Tamil Nadu Sales Tax Appellate Tribunal. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner
Office of the Assistant Commissioner (ST)
Royapettah Assessment Circle
Chennai - 600 028.

+2cc to Mr.Vijayan Subramanian, Advocate Sr.No.44408

KK(CO)
sm:17.7.2018