IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2018

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THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.24223 of 2018
and
W.M.P.No.28229 of 2018

Siemens Financial Services Pvt Ltd,
Represented by its Manager, Indirect Taxation,
Miss.G.Vasanthi,
4th Floor, Seethakathi Business Centre,
No.272/688 Anna Salai
Chennai - 600 006. ... Petitioner

vs.

1.The Commercial Tax Officer
Group VII, Enforcement (Central)
PAPJM Buildings,
Greams Road,
Chennai - 600 006.

2.The Assistant Commissioner (CT),
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai - 600 031. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the case from the file of the second respondent herein, quash the impugned recovery notice of the second respondent in TIN 33810462045/2014-15 to 2015-16 dated 05.09.2018 issued pursuant to the order of assessment in TIN 33810462045/2014-15 and TIN 33810462045/2015-16 dated 17.07.2018 levying tax under the TNVAT Act, 2006 and direct the second respondent not to proceed with recovery proceedings pending disposal of the rectification petitions dated 02.08.2018 & 03.08.2018 filed under Section 84 of the TNVAT Act, 2006 for the Assessment Years TNVAT/2014-15 & 2015-16.

For Petitioner : Ms.Lakshmi Sriram

For Respondents : Mrs.G.Dhana Madhri
Government Advocate (Tax)

O R D E R

The petitioner is aggrieved against the demand notice dated 05.09.2018, wherein and whereby, the petitioner was called upon to pay the tax arrears of Rs.21,98,453/-.

2. Heard Ms.Lakshmi Sriram, learned counsel appearing for the petitioner and Mrs.G.Dhana Madhri, learned Government Advocate (Tax) appearing for the respondents.

3. The main grievance of the petitioner before this Court against the impugned demand is that the same was issued without considering the fact that the petitioner has already moved application under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, for rectification of the assessment order passed in respect of assessment year 2014-15 and 2015-16. Therefore, it is contended that till an order is passed in the rectification petition, the impugned demand cannot be made in the meantime, and also by informing the petitioner that non-payment would attract further proceedings of attachment of the bank accounts etc.

4. When the matter was taken up for admission on 14.09.2018, the learned Government Advocate took notice for the respondents and sought time to get instructions with regard to the pendancy of the application filed under Section 84. Accordingly, the matter is listed today for further hearing.

5. The learned Government Advocate, based on written instruction, submitted that though, the rectification petitions were filed by the petitioner under Section 84, the same are not available in the records even though, the same was handed over to the office of the second respondent on 03.05.2018. Therefore, she submitted that the petitioner may be directed to furnish one more copy of such rectification petition to the concerned authority immediately so as to enable the disposal of such petition without loss of further time.

6. Considering the above said facts and circumstances, more particularly, the admitted fact that the petitioner has already filed the rectification petition in respect of those two assessment years and the same are pending before the authority concerned, this Court is of the view that it is not proper for the 2nd respondent to issue the impugned demand calling upon the petitioner to pay the tax liability in the mean time. Therefore, this writ petition is disposed of as follows:

(a) The petitioner is directed to furnish copies of the rectification petition to the second respondent within a period of 7 days from the date of receipt of a copy of this order.

(b) On receipt of such copies of rectification petition, the second respondent shall pass orders on the same on merits and in accordance with law within a period of four weeks thereafter, after giving due opportunity of personal hearing to the petitioner.

(c) Till an order is passed in the rectification petition as stated supra, the impugned demand notice shall be kept in abeyance.

(d) This Court is not expressing any view on the merits of the assessment already passed or the grounds raised in the rectification petition filed by the petitioner, as it is for the second respondent to consider and decide the same on merits and in accordance with law.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Commercial Tax Officer
Group VII, Enforcement (Central)
PAPJM Buildings,
Greams Road, Chennai - 600 006.

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

+1cc to Mr.Lakshmi Sriram, Advocate Sr.64902
+1cc to the Government Pleader Sr.65167

W.P.No.24223 of 2018

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srg 23/10/2018