IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.6.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NOS.14034 & 14035 OF 2018 &
WMP.NOS.16586 & 16587 OF 2018

M/s.Software One India Private Limited, rep.by its Authorized Signatory Mr.Vishal Dua ...Petitioner

Vs

1.The Sales Tax Officer, Mandaveli Assessment Circle, Station No.46, Greenways Road, Chennai-28.

2.The Commissioner of Commercial Taxes, Chennai-5.

3.The Government of Tamil Nadu, rep.by its Secretary, Department of Revenue, Fort.St.George, Chennai-9. ...Respondents

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records relating to the impugned orders respectively in TIN/33630803487/2013-14 and TIN/ 33630803487/2014-15, both dated 07.5.2018 passed by the first respondent and quash the same.

For Petitioner : Mr.R.Parthasarathy
For Respondents : Mrs.G.Dhana Madhri, GA

COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner has filed these writ petitions challenging the orders of assessment passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the years 2013-14 and 2014-15.

3. The learned counsel for the petitioner has strenuously contended that the impugned orders suffer from errors apparent

on the face of the records and on a wrong appreciation of the legal position.

4. In my considered view, the issues involved in the instant cases are not purely questions of law, but mixed questions of fact and law, which need to be adjudicated. This adjudicatory process cannot be exercised at this juncture, that too, in a writ jurisdiction, since the petitioner has an effective alternate remedy of appeal before the Appellate Authority. The Tamil Nadu Value Added Tax Act, 2006 is a complete Code by itself and the remedies provided thereunder are efficacious remedies. The Appellate Authority has sufficient power to appreciate and re-appreciate the factual matrix involved in the case. Therefore, this Court is of the view that the petitioner should not be permitted to bypass the remedy.

5. The learned counsel for the petitioner submits that input tax credit, which has to be reversed for the assessment year 2014-15 is substantial and in the event the petitioner has to pursue the appeal remedy, there is every possibility that the respondent may initiate coercive action pursuant to the impugned assessment order concerned.

6. Since this Court has come to the conclusion that the petitioner should definitely avail the remedy under the said Act, an interim protection can be granted to the petitioner till they move the Appellate Authority while holding that the writ petitions are not maintainable.

7. Accordingly, the writ petitions are dismissed. No costs. Consequently, the connected WMPs are also dismissed.

8. Liberty is granted to the petitioner to file appeals before the Appellate Authority concerned and if such appeals are filed within a period of 30 days from the date of receipt of a copy of this order, the Appellate Authority concerned shall entertain the appeals without rejecting the same on the ground of limitation. Till the petitioner presents the appeals and moves for appropriate interim orders before the Appellate Authority concerned, the respondent shall not initiate any precipitative action pursuant to the impugned assessment orders.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

RS

To

1. The Sales Tax Officer, Mandaveli Assessment Circle,
   Station No.46,
   Greenways Road, Chennai-28.

2. The Commissioner of Commercial Taxes, Chennai-5.

3. The Secretary to Government of Tamil Nadu,
   Department of Revenue,
   Fort.St.George, Chennai-9.

+2ccs to Mr.Lakshmi Kumaran, Advocate, S.R.No.36926
+1cc to the Government Pleader, S.R.No.37654

WP.Nos.14034 & 14035 of 2018&
WMP.Nos.16586 & 16587 of 2018

CS/18/06/18