IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.6.2016

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THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

W.P.Nos.40775 of 2015, 18347 of 2014 and
33736 of 2013
and
M.P.Nos.1 of 2015, 1 of 2014 and 1 and 2 of 2013
and M.P.No.1 of 2014 in W.P.No.33736 of 2013

M/s.Tamil Nadu State Marketing
Corporation Ltd.,
4th Floor, CMDA Tower-II,
Gandhi Irwin Bridge Road,
Egmore, Chennai-600 008
Represented by its Managing Director(i/c)
Dr.C.N.Mahesvaran ... Petitioner in W.P.No.40775 of 2015

M/s.Tamil Nadu State Marketing
Corporation Ltd.,
4th Floor, CMDA Tower-II,
Gandhi Irwin Bridge Road,
Egmore, Chennai-600 008
Represented by its Managing Director
Shri T.Soundiah ... Petitioner in W.P.Nos.18347 and 33736 of 2013

Vs

1.The Assistant Commissioner of
Income Tax,
Corporate Circle 3(1),
124, MG Road, Chennai-34

2.The Commissioner of Income Tax,
Chennai-3
124, MG Road, Chennai-34

3.The Chief Commissioner of Income Tax,
Chennai-3,
124, MG Road, Chennai-34

4.The Commissioner of Income Tax,
(Appeals)-11,
124, MG Road,
Chennai-34 ... Respondents
in W.P.No.40775 of 2015

1. The Chief Commissioner of Income Tax,
Chennai-I,
124, MG Road,
Chennai-34.

2.The Commissioner of Income Tax,
Chennai-I,
124, MG Road,
Chennai-34.

3.The Commissioner of Income Tax (Appeals),
Chennai-III,
124, MG Road,
Chennai-34.

4.The Additional Commissioner
of Income Tax,
Company Circle III(1),
Chennai-34.

5.The Assistant Commissioner of
Income Tax,
Company Circle III(1),
Chennai-34 ..... Respondents in
W.P.No.18347 of 2014

1.The Chief Commissioner of Income Tax,
Chennai-III,
121, M.G.Road, Chennai-34.

2.The Commissioner of Income Tax,
Chennai-III,
121, M.G.Road, Chennai-34

3.The Commissioner of Income Tax(Appeals)-III,
121, M.G.Road, Chennai-34.

4.The Joint Commissioner of Income Tax,
Company Range III(1),
121, M.G.Road, Chennai-34

5.The Assistant Commissioner of Income Tax,
Company Circle III(1),
121, M.G.Road, Chennai-34. .... Respondents in W.P.No.33736 of 2013

Prayer in W.P.No.40775 of 2015: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records of the petitioner on the file of the 1st respondent and quash the impugned order in C.No.ACIT/COR CIR 3(1)/AAACT2964P/2015-16 dated 15.12.2015 and consequently direct the first respondent to grant stay of collection of tax and interest for the assessment year 2012-13 till the disposal of appeal by the 4th respondent.

Prayer in W.P.No.18347 of 2014: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records of the petitioner on the file of the 5th respondent and quash the impugned order in PAN/GIR:AAACT2964P/2014-15 dated 30.06.2014 and consequently direct the fifth respondent to grant stay of collection of tax and interest for the assessment year 2011-12 till the disposal of appeal by the 3rd respondent.

Prayer in W.P.No.33736 of 2013: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records of the petitioner on the file of the 5th respondent in PAN/GIR:AAACT2964P/2013-14 and quash the impugned order under Section 220(3) dated 06.12.2013 and direct the 5th respondent to grant stay of collection of tax and interest for the assessment year 2010-11 till the disposal of appeal by the 3rd respondent.

For Petitioner	:	Mr.P.H.Arvindh Pandian Additional Advocate General for Mr.Subbaraya Aiyar in all W.Ps.
For Respondents	:	Mrs.Pushpa for Mr.M.Swaminathan in all W.Ps.

COMMON ORDER

Heard Mr.Mr.P.H.Arvindh Pandian, learned Additional Advocate General for M/s.Subbaraya Aiyar, Padmanaban and Ramamani, counsel for the petitioner and M/s.Pushpa, learned Standing Counsel, who accepts notice for the respondents and with the consent of parties, the writ petitions are taken up for final disposal.

2. In all these writ petitions, the challenge is to the orders passed by the Assistant Commissioner of Income Tax under Section 220(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the

Act' in short). By the said orders, a condition has been imposed by the authority for grant of stay.

3. The first writ petition was filed in the year 2013 and an interim order has been granted by this Court on 11.12.2013, which reads as follows:

> *"Mr.T.Pramod Kumar Chopda, learned counsel for Income Tax takes notice for the respondents and requests two weeks' time to file count*er.
>
> *2. Mr.P.H.Arvind Pandian, learned Additional Advocate General would contend the 5th respondent failed to appreciate that in the present case, the allowance of special privilege fee was subject matter of appeal before the Tribunal and the Tribunal has upheld the claim of the petitioner. Hence, there is no power vested with the 5th respondent to exercise jurisdiction in respect of the special privilege fee, which has been considered and decided in appeal by the Tribunal under Explanation (c) to Section 263(1) of the Act. He also submits that the action of the respondents his ultravires the provisions of the Act and thus, there is a scope of interference by this Court to quash the show cause notice.*

3.Considering the same, there shall be an order of interim stay till 03.01.2014.

Post the matter on 03.01.2014 for counter and disposal."

The interim order has been subsequently extended from time to time and it is in force as on date. As and when subsequent orders were passed by the Assistant Commissioner of Income Tax, the petitioner has filed the other writ petitions and in the other writ petitions also interim orders have been granted by this Court, following the earlier orders.

4. On the last hearing date, i.e. on 3.6.2016, it was represented by the learned Additional Advocate General that the Commissioner of Income Tax (Appeals) has already taken up the appeals and the hearing is about to conclude. Therefore, this Court directed the writ petitioner to file an affidavit, by passing the following order:

"Heard Mr.P.H.Arvind Pandian, learned Additional Advocate General for the petitioner and Ms.Pushpa, learned Standing Counsel for the respondents.

2.In all the writ petitions, at the time when they were entertained, an order of interim stay was granted, by virtue of which, no coercive action could be taken against the petitioner for recovery of tax. This Court was prima facie satisfied and granted interim order on the ground that as against the orders of assessment, the petitioner filed appeals before the Commissioner of Income Tax (Appeals) and the appeals have been taken up for hearing on 31.12.2015.

3. Th learned Additional Advocate General submits that the appeals have been heard and they are in the final stage.

4.Prima facie, this Court is of the view that it will be inequitable to disturb the interim order, which has been continuing since 2013. However, to make things clear, there will be a direction to the petitioner to file an affidavit setting out as to what is the stage of the appeals and other connected matters.

5. Post on 16.6.2016."

5. Pursuant thereto, an affidavit has been filed by the writ petitioner stating that for the assessment year 2010-11, the appeal in I.T.A.No.670/13-14 was posted for hearing on 9.7.2014 and subsequently, adjourned to 13.8.2014, 21.08.2014, 10.09.2014 and 9.10.2014. The appeals for the assessment years 2011-12, 12-13 in

I.T.A.Nos.122/2014-15, 145/15-16 and 233/15-16 were also taken up for hearing along with the appeal for the assessment year 2010-11 and all the appeals were posted for hearing on 31.12.2015 and subsequently adjourned to 02.02.2016, 02.03.2016, 18.4.2016 and 19.5.2016. It is further submitted that written statements, requisite documents and decisions have been placed and the petitioner has also clarified the issues, which have been raised by the Commissioner of appeals. Further, the learned Additional Advocate General has produced a copy of the letter dated 14.6.2016, sent by the Commissioner of Income Tax Appeals to the Principal Commissioner of Income Tax Appeals, with a copy marked to the petitioner and their counsel, forwarding the petitioner's written statements and also calling for the assessing officers remand report to be filed on or before 15.3.2016.

6. From the averments made in the affidavit filed by the petitioner as well as the proceedings of the Commissioner of Income Tax Appeals, dated 14.6.2016, it is evident that the hearing of the appeals have been concluded and all that is to be done is to pass an order.

7. The learned Standing counsel for the respondents/Department, on instructions, submitted that orders will be passed within a period of eight weeks.

8. Therefore, this Court is of the view that it would be inequitable to vacate the interim orders, which have been in force for almost 2 1/2 years in the first writ petition and for about 1 1/2 years in the other writ petitions, at this stage of the matter, especially, when the appeals filed by the petitioner have been finally heard and orders are to be passed shortly.

9. In the light of the fact that the appeal petitions filed against the orders of assessment have been heard and orders are to be passed by the Commissioner of Income Tax Appeals, which according to the respondents, will be passed within a period of eight weeks, no action for recovery or no other coercive action shall be taken against the petitioner, pursuant to the impugned orders. Further action by the respondent department shall abide by the orders to be passed by the Commissioner of Appeals, in the appeals which have been filed by the petitioner.

10. The writ petitions are disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

16.06.2016

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To

1.The Assistant Commissioner of
Income Tax,
Corporate Circle 3(1),
124, MG Road, Chennai-34

2.The Commissioner of Income Tax,
Chennai-3
124, MG Road, Chennai-34

3.The Chief Commissioner of Income Tax,
Chennai-3,
124, MG Road, Chennai-34

4.The Commissioner of Income Tax,
(Appeals)-11,
124, MG Road,
Chennai-34

5. The Chief Commissioner of Income Tax,
Chennai-I,
124, MG Road,
Chennai-34.

6.The Commissioner of Income Tax,
Chennai-I,
124, MG Road,
Chennai-34.

7.The Commissioner of Income Tax (Appeals),
Chennai-III,
124, MG Road,
Chennai-34.

8.The Additional Commissioner
of Income Tax,
Company Circle III(1),
Chennai-34.

9.The Assistant Commissioner of
Income Tax,
Company Circle III(1),
Chennai-34

10.The Joint Commissioner of Income Tax,
Company Range III(1),
121, M.G.Road, Chennai-34

11.The Assistant Commissioner of Income Tax,
Company Circle III(1),
121, M.G.Road, Chennai-34.

T.S.SIVAGNANAM,J.

msk

W.P.Nos.40775 of 2015, 18347 of 2014 and 33736 of 2013

16.06.2016