



#38-3

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

W.P.(C) 8225/2010

M/S VODAFONE ESSAR  
MOBILE SWERVICE LTD.

Through

..... Petitioner

Mr. M.S. Syali, Senior Advocate with  
Mr. Peeyoosh Kalra, Ms. Mahua  
Kalra, Ms. Husnal Syali, Mr. Sumit  
K. Singh and Mr. Sudhendra Tripathi,  
Advocates

versus

COMMISSIONER OF  
INCOME TAX TDS & ORS.

Through

..... Respondents

Mr. Sanjeev Sabharwal, Advocate

**WITH**

39.

W.P.(C) 8226/2010

M/S VODAFONE ESSAR  
MOBILE SERVICES LTD.

Through

..... Petitioner

Mr. M.S. Syali, Senior Advocate with  
Mr. Peeyoosh Kalra, Ms. Mahua  
Kalra, Ms. Husnal Syali, Mr. Sumit  
K. Singh and Mr. Sudhendra Tripathi,  
Advocates

versus

COMMISSIONER OF INCOME  
TAX TDS & ORS

Through

..... Respondents

Mr. Sanjeev Sabharwal, Advocate



**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE MANMOHAN**

% **ORDER**  
**09.12.2010**

By these two writ petitions, the assessee-petitioner has called in question the legal justifiability of the order dated 3<sup>rd</sup> December, 2010 passed by the Commissioner of Income Tax, TDS (for short "Commissioner") in respect of Financial Years 2007-08 and 2008-09.

It is not disputed that the demand made by the revenue is ₹ 47.20 crores. The Commissioner in paragraph nos. 9 to 11 of the impugned order has stated thus:-

*"9. Despite the hearing being closed, on the morning of 03/12/2010, Sh. Vishal Malhotra, the AR, telephonically requested for time. He attended at 4.00 PM today i.e. on 03/12/2010 and raised the issue of refund of Rs. 8 Cr which would become due to him if appeal effect is given to the Hon'ble Court order pertaining to FY 2001-02. The AR has never before in his written submissions and his verbal submissions before me raised this issue of refund for FY 2001-02 and in absence of records, written details, I am not in a position whatsoever to entertain this request at this stage. However, the AR was asked to make a separate petition regarding this refund before the AO and mark a copy of his petition to the undersigned.*

*10. The AR then stated that the assessee is willing to pay only Rs. 12 Cr in three installments starting December, 2010.*



11. *This is not acceptable. I had earlier asked the AR to pay Rs 25 Cr. Since the issue of pre-paid Sim/Recharge Coupons is in favour of revenue, this confirmed demand of Rs. 20 Cr, should be paid by 20/12/2010 and the balance demand would remain stayed till 15/03/2011. Needless to say that the Department does not expect a payment within the next week, as the Hon'ble High Court has directed that the demand be kept in abeyance for a period of a week after passing of this order."*

On a perusal of the aforesaid order, it is perceptible that the Commissioner has directed stay of the amount, subject to the payment of ₹ 20 crores.

It is contended by Mr. M.S. Syali, learned senior counsel for the assessee-petitioner that the assessee is entitled to get the adjustment of refund. The Commissioner, as is manifest in the paragraph 9 of the impugned order which we have reproduced hereinabove, has really not adverted to the same.

However, Mr. Sanjeev Sabharwal, learned standing counsel for the revenue submitted that the assessee should first pay the amount as directed by the Commissioner and then make claim for refund.

Having heard the parties, we are inclined to issue following directions :



- a) The assessee-petitioner is directed to pay ₹ 20 crores directed by the Commissioner in two installments by 10<sup>th</sup> February, 2011.
- b) The first installment of ₹ 10 crores shall be paid on 10<sup>th</sup> January, 2011.
- c) Any amount paid or recovered shall be given credit to the assessee-petitioner as regard to the second installment.
- d) The application for refund shall be decided by the assessing officer by 5<sup>th</sup> February, 2011 by affording adequate opportunity of hearing to the assessee-petitioner.

With the aforesaid directions, the present writ petitions stand disposed of.

Order dasti.

*Mint*  
CHIEF JUSTICE

*Manish*  
MANMOHAN, J

DECEMBER 09, 2010

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- Fresh CM No. 3411/11 For 9/12/10 (P. 103)  
Clarification of order dt.