IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P. NOs. 10494 and 10495 of 2015
and
M.P. Nos. 1 and 1 of 2015

Ashok Leyland Limited
Rep. by its Deputy General
Manager-Corporate Taxes
K.K. Sekar
No.1 Sardhar Patel Road
Guindy
Chennai - 600 032. .. Petitioner in both WPs

-vs-

1. The Deputy Commissioner (CT) III
Large Taxpayers Unit
Dugar Towers
34, Marshalls Road
Egmore, Chennai - 600 008.

2. The Joint Commissioner (CT) (Appeals)
III Floor, C.T. Building Annexe,
Greams Road,
Chennai - 600 006. .. Respondents in both WPs

PRAYER in both Writ Petitions: These Writ Petitions are filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the files of the Second respondent herein in his S.P. No. 34/15 in A.P. No.80/14 and S.P. No. 35/15 in A.P No.84/14 dated 12.03.2015, quashing the same, while directing the second respondent to re-dispose the stay application in S.P. No. 34/15 arising out of in A.P. No.80/14 and S.P. No. 35/15 in A.P No.84/14 dated 12.03.2015 and pass further orders.

For petitioner in both WPs : Mr.N.Inbarajan
For respondent in both WPs : Mr. Manoharan Sundaram, AGP (T)

ORDER

By consent of both parties, these writ petitions are disposed of, at the stage of admission itself.

2. Two writ petitions have been filed by M/s. Ashok Leyland Limited. Mr. N. Inbarajan, learned counsel appearing for the petitioner would submit that the petitioner company, being a Public Limited Company, incorporated under the Companies Act, subjected to Assessment for the year CST.2003-04 and 2006-07. However, in the assessments, the first respondent disallowed the sales at concession rate against C-declaration forms on the ground that some of the declaration forms were defective. Though there was a return filed under Section 12-C of the Act on 30.03.2007, there was a disallowance of supplementary credit notes. In view of that the petitioner company lodged statutory first appeals before the Second respondent the Joint Commissioner (CT) (Appeals), Chennai, after depositing 25% of the disputed tax by cheque No.002655 dated 08.04.2014 for Rs.95,84,631/- and cheque No. 002502 dated 25.03.2015 for Rs.37,61,981/- in W.P.No.10494/2015 and cheque No.002661 dated 23.04.2014 for Rs.1,56,11,337/- and cheque No.002503 dated 25.03.2015 for Rs.1,59,05,679/- in W.P. No.10495/ 2015. Then the petitioner moved stay applications for stay of recovery of the balance of tax of Rs.1,12,81,537/- and Rs.4,68,34,009/- raising substantive grounds, pleading prima facie case and balance of convenience. But, the second respondent, mechanically directed the petitioner to deposit further 25% of the disputed taxes and also to furnish a bank guarantee for the balance of tax and penalty.

3. Therefore, the grievance of the petitioner is that when the petitioner company has complied with the first condition in the impugned order and has also made a deposit of further 25% of the disputed taxes by Citibank Cheque No.002502 & 002503 dated 25.03.2015, the second respondent ought not to have imposed the unreasonable second condition, to furnish sufficient security/ bank guarantee to the satisfaction of the Assessment Officer. Learned counsel further submitted that it is not in dispute that the petitioner had deposited 50% of the disputed tax. Having deposited 50% of the disputed tax, the second respondent ought not to have imposed the second unreasonable condition, he pleaded.

4. It is at this point of time, learned counsel representing the respondents submitted that since the petitioner, while filing the first appeals to the second respondent, has deposited 25% of the disputed tax and the second respondent having directed the petitioner to pay another 25% of the disputed tax, has imposed one another condition, which is in order.

5. Recording the said submission and taking note of the fact that the petitioner company has deposited 50% of the disputed tax amount, this Court replaces the second condition mentioned in the impugned order, with a direction to the petitioner company to execute personal bonds to the same value within a period of two weeks from the date of receipt of a copy of this order.

6. With this slight modification, both the writ petitions stand allowed. Consequently, the connected M.Ps are closed. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

avr

To

1. The Deputy Commissioner (CT) III
Large Taxpayers Unit
Dugar Towers
34, Marshalls Road
Egmore, Chennai - 600 008.

2. The Joint Commissioner (CT) (Appeals)
III Floor, C.T. Building Annexe,
Greams Road,
Chennai - 600 006.

1 cc to Mr. N.Inbarajan,Advocate, SR.No.20350
2 cc to Government Pleader,Sr.No20302 & 20303

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ug(co)
pmk.14.5.2015