IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.19733 of 2015
and M.P.Nos.1 & 2 of 2015

CRI Pumps (P) Limited ... Petitioner
Represented by its Chairman
C.Velumani
7/46-1 Keeranatham Road
Saravanampatty
Coimbatore-641035.

Vs

1. The Assistant Commissioner (CT)(FAC)
Ganapathy Circle, Coimbatore.

2. The Appellate Deputy Commissioner (CT)
Coimbatore. ... Respondents

This Writ Petition under Article 226 of the Constitution of India for the issuance of a Writ of certiorari calling for the records on the files of the First Respondent herein in TIN: 33162201952/2009-10 dated 19.05.2015 quashing the same while directing the First Respondent herein to refund the amount of Rs.1,42,79,672/- recovered by the First Respondent from the State Bank of India Commercial Branch Trichy Road Coimbatore.

For petitioner : Mr.N.Inbarajan

For Respondents : Mr.ANR.Jayapratab,
Government Advocate(T)

O R D E R

Heard Mr.N.Inbarajan, learned counsel for the petitioner and Mr.ANR.Jayapratap, learned Government Advocate (Taxes), who took notice for the respondents and with their consent, the main writ petition is taken up for disposal.

2. This writ petition has been filed challenging the impugned order dated 19.05.2015 passed by the Assistant Commissioner (CT) (FAC), Ganapathy Circle, Coimbatore in TIN: 33162201952/2009-10 and to direct him to refund the amount of Rs.1,42,79,672/- recovered by him from the State Bank of India, Commercial Branch, Trichy Road, Coimbatore.

3.1 Learned counsel for the petitioner submits that as against the said impugned order dated 19.05.2015, the petitioner has preferred an appeal dated 18.06.2015 within a period of 30 days along with a stay application,which were presented on 22.06.2015, however, 1st respondent even during the pendency of the appeal along with the stay application, has issued recovery notice under Section 45 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the Act).

3.2 Learned counsel for the petitioner would further submits that the petitioner, after payment of 25% of the balance of tax, has filed an appeal under Section 51 of the Act before the 2nd respondent and he has also obtained a certificate on 18.06.2015 from the 1st respondent certifying that the petitioner has paid 25% of the tax for filing the appeal before the 2nd respondent. When that being the case, though the 1st respondent is aware of pending appeal as well as stay application before the 2nd respondent, which has been presented on 22.06.2015 along with a certificate of payment of Rs.16,86,000/- being 25% of the tax amount, he ought not to have initiated recovery proceedings under Section 45 of the Act to their bankers viz., State Bank of India, Commercial Branch, Trichy Road, Coimbatore and IDBI Bank Ltd., Corporate Office, Coimbatore, to whom he has issued Form U Notice for recovery of money due as per Rule 9 (4) and Section 45(3) of the Act.

3.3 Learned counsel for the petitioner further submitted that the petitioner has also informed the Bankers not to comply with such recovery proceedings and simultaneously by letter dated 26.06.2015, they have intimated the 1st respondent to defer the collection proceedings, in view of pendency of the appeal as well as the stay application before the 2nd respondent. Inspite of the fact that the petitioner has filed an appeal after payment of 25% of tax amount along with stay application and also the subsequent letter dated 26.06.2015 addressed to the 1st respondent, intimating to defer the collection proceedings, on 27.06.2015, the 1st respondent has made a huge threat to the Branch Manager, State Bank of India, Commercial Branch, Trichy Road, Coimbatore and obtained a pay order for Rs.1,42,79,672/-, which is totally unjustified.

4. Mr.ANR.Jayapratap, learned Government Advocate (Taxes) appearing for the respondents has submitted that by the impugned order dated 19.05.2015, the 1st respondent has confirmed the proposal for reversing the ITC for the purchases effected from unregistered dealers, from stopped business dealers and cancelled dealers, by coming to the conclusion that the petitioner has wrongly availed ITC to the tune of Rs.85,63,401/- under Section 27(2) of the ACT and therefore levied penalty under Section 27(4)(ii) of the Act at 100% for such wrong availment of ITC. Subsequently, the 1st respondent has also obtained a pay order for a sum of Rs.1,42,79,672/- from the Branch Manager, State Bank of India, Commercial Branch, Trichy Road, Coimbatore. Since the 1st respondent has initiated recovery proceedings and obtained pay order during the pendency of the appeal along with the stay application, maximum direction that can be given by this Court is to direct the appellate authority to expedite the matter and this Court shall not interfere with the impugned order.

5. This Court though finds justification in the submission of the learned Government Advocate (Taxes) with regard to directing the appellate authority to dispose of the appeal expeditiously, is not acceding to the argument with regard to non interference of this Court in respect of initiation of recovery proceedings by the 1st respondent. The petitioner having suffered the impugned order of reversal of ITC under Sections 19(4) and 19(15) of the Act along with imposition of penalty under Section 27(4)(ii) of the Act , has filed an appeal under Section 51 of the Act before the 2nd respondent, after obtaining a certificate dated 18.06.2015 from the 1st respondent for payment of Rs.16,86,000/- (being 25% of the balance of tax), along with a stay application, which were presented on 22.06.2015. It is not in dispute that the petitioner has filed the said appeal along with stay application in time. Further, a reading of the impugned order does not throw much light on what basis the 1st respondent has come to the conclusion for reversal of ITC under Sections 19(4) and 19(15), so as to invoke power under Section 27(4)(ii) to levy penalty for wrongful availment of ITC of Rs.85,63,401/-. Except making four columns both in page Nos.2 and 3 of the impugned order, no observation whatsoever has been made by the Assessing Officer. Therefore, this Court is of the view that it is a fit case for filing appeal before the appellate authority and rightly the petitioner has also filed an appeal on 22.06.2015 after obtaining a certificate from the 1st respondent for payment of 25% of tax and it is pending consideration. When that being the position, in the meanwhile, the 1st respondent ought not to have obtained pay order for a sum of Rs.1,42,79,672/- on 27.06.2015. As rightly contended by the learned counsel for the petitioner, if this Court allows the

1st respondent to retain the realised amount of Rs.1,42,79,672/- by him, it is not known what will happen to the payment of 25% of tax amount already paid by the petitioner to maintain his appeal along with the stay application. Therefore, this Court is unable to justify the contention made by the learned Government Advocate not to interfere with the amount realised from the petitioner's Bank.

6. In view of the above, without going into the merits of the matter, which has been seized by the 2nd respondent appellate authority, finding an apparent error on the part of the 1st respondent in realising the ITC quantified along with penalty amount during the pendency of appeal that has been filed within time, is constrained to interfere with the same, otherwise the purpose of statutory appeal will become an empty formality. Accordingly, the recovery order alone is set aside and the 1st respondent is directed to return the pay order to the petitioner within a period of two weeks from the date of receipt of a copy of this order. However, without going into the merits of the matter, the 2nd respondent, to whom the appeal and stay applications are submitted along with the certificate for payment of 25% of the balance of tax, is directed to take up the appeal and decide the same on merits and in accordance with law as expeditiously as possible.

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

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT)(FAC)
   Ganapathy Circle, Coimbatore.

2. The Appellate Deputy Commissioner (CT)
   Coimbatore.

+1cc to M/s.N.Inbarajan, Advocate, S.R.No.33420
+1cc to the Special Government Pleader(Taxes), S.R.No.33673

W.P.No.19733 of 2015

PPA(CO)
CA(15/07/2015)