IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.22656 to 22661 of 2015
and M.P.Nos.1 to 3 of 2015

M/s.Praxair India Private Limited,
rep.by its Authorized Signatory -
N.Ravichandar,
No.21-C, Sidco Industrial Estate,
Ambattur,
Chennai - 600 098. ... Petitioner in all W.Ps

Vs.

1. The Assistant Commissioner (CT),
Villivakkam Assessment Circle,
Villivakkam,
Chennai - 600 049,

2. The Assistant Commissioner (CT),
Pattaravakkam Assessment Circle,
Villivakkam,
Chennai - 600 049,

3. The Appellate Deputy Commissioner (CT),
Chennai (South),
3rd Floor, C.T.Building Annexe,
No.1, Greams road,
Chennai - 600 006,

4. The Manager,
Bank of America,
Solarpuria Windsor, 5th Floor,
B-Wing, No.3, Ulsoor Road,
Bangalore - 560 042. .. Respondents in all W.Ps

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PRAYER: Writ Petition in W.P.No.22656 of 2015 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of certiorari to call for the records on the file of the 3rd respondent in his proceedings in New S.P.No.100/2015 in AP.137/2014-VAT (Old No.SP.No.47/2014 in APV.56/2014/VI) dated 21.07.2015 relating to the assessment year 2006-2007 under TN VAT Act, 2006 and quash the same.

Writ Petition in W.P.No.22657 of 2015 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of certiorari to call for the records on the file of the 3rd respondent in his proceedings in New S.P.No.99/2015 in AP.136/2014-VAT (Old No.SP.No.46/2014 in APV.55/2014/VI) dated 21.07.2015

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relating to the assessment year 2007-2008 under TN VAT Act, 2006 and quash the same.

Writ Petition in W.P.No.22658 of 2015 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of certiorari to call for the records on the file of the 3rd respondent in his proceedings in New S.P.No.102/2015 in AP.139/2014-VAT (Old No.SP.No.49/2014 in APV.58/2014/VI) dated 21.07.2015 relating to the assessment year 2010-2011 under TN VAT Act, 2006 and quash the same.

Writ Petition in W.P.No.22659 of 2015 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of certiorari to call for the records on the file of the 3rd respondent in his proceedings in New S.P.No.104/2015 in AP.141/2014-VAT (Old No.SP.No.51/2014 in APV.60/2014/VI) dated 21.07.2015 relating to the assessment year 2008-2009 under TN VAT Act, 2006 and quash the same.

Writ Petition in W.P.No.22660 of 2015 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of certiorari to call for the records on the file of the 3rd respondent in his proceedings in New S.P.No.103/2015 in AP.140/2014-VAT (Old No.SP.No.50/2014 in APV.59/2014/VI) dated 21.07.2015 relating to the assessment year 2009-2010 under TN VAT Act, 2006 and quash the same.

Writ Petition in W.P.No.22661 of 2015 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of certiorari to call for the records on the file of the 3rd respondent in his proceedings in New S.P.No.101/2015 in AP.138/2014-VAT (Old No.SP.No.48/2014 in APV.57/2014/VI) dated 21.07.2015 relating to the assessment year 2011-2012 under TN VAT Act, 2006 and quash the same.

For Petitioner in all W.Ps	:	Mr.P.S.Raman,Sr.Counsel for Ms.R.Hemalatha
For Respondents 1 to 3 in all W.Ps	:	Mr.S.Kanmani Annamalai, Addl.Govt.Pleader (Taxes)

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ORDER

These writ petitions have been directed against the impugned orders dated 21.7.2015 passed by the 3rd respondent - Appellate Deputy Commissioner (CT), Chennai (South) in and by which the 3rd respondent has come to the conclusion that there is no provision for seeking stay for two times for the same appeal. On that ground, the fresh stay petitions filed on 21.7.2015 seeking absolute stay of recovery of balance of 50% of the tax and the penalty were dismissed by the 3rd respondent as not maintainable.

2. Learned Senior counsel appearing for the petitioner submitted that in the case on hand the petitioner suffered orders of assessment

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passed by the 1st respondent in respect of assessment years 2006-07 to 2011-12 on 31.1.2014 and aggrieved by the same the petitioner filed appeals on 28.2.2014 by depositing 25% of the disputed tax amount, which is a condition precedent to entertain the appeals. In the stay petitions filed before the 3rd respondent, orders of stay were granted on 5.5.2014 for a period of six months or till the disposal of the case, whichever is earlier from the date of issue of the order, by imposing condition that the petitioner shall pay another 25% of the disputed tax and filing a bank guarantee for the balance tax and penalty on or before 4.6.2014. Pursuant to the said orders, the petitioner has also deposited another 25% of the disputed tax amount and furnished bank guarantee for the years 2006-07 to 2011-12. Since the stay granted by the 3rd respondent has expired, the petitioner moved fresh stay petitions. The 3rd respondent rejected the fresh stay petitions filed by the petitioner by the impugned orders on the ground that under Section 51(4) of the TN VAT Act, 2006, there is no provision for seeking stay for two times for the same appeal. Challenging the same, the present writ petitions are filed by the petitioner.

3. The grievance of the petitioner is that although the petitioner was always ready and willing to proceed with the pending appeals, the appeals could not be taken up for final disposal. Now, the appeals are posted for hearing on 3.8.2015. But in the meanwhile since the appellate authority has granted conditional stay by orders dated 5.5.2014 saying that the order of stay will operate for a period of six months or till the disposal of the case, which ever is earlier, and in view of the non-disposal of the appeals, the respondent has hurriedly proceeded to invoke the bank guarantee. In view of the peculiar circumstances created, the petitioner has once again moved stay applications again seeking absolute stay of balance of tax and penalty. However, by the impugned orders dated 21.7.2015, the respondent has refused to entertain the stay applications on the ground that there is no provision for seeking stay for two times for the same appeal. Accordingly, it was pleaded before this Court that the petitioner is ready to get along with the matter without taking any adjournment, whatsoever, on any ground. If the appeals preferred by the petitioner are directed to be taken up by the 3rd respondent on the next date of hearing viz., on 3.8.2015, no prejudice would be caused to either of the parties. Learned Senior Counsel appearing for the petitioner submitted that till the disposal of the appeals, a direction may be given to the respondents 1 to 3 not to encash the bank guarantee.

4. This Court also finds some substance in the contention raised on behalf of the petitioner. The reason is, admittedly the appellate authority has granted conditional stay orders on 5.5.2015, as I mentioned above and those conditional orders of stay are for a period of six months or till the disposal of the appeals, which ever is earlier. When the 3rd respondent - appellate authority himself has granted the above mentioned orders and it is also not the case of the appellate authority that the petitioner has been dragging on the matter by seeking frequent adjournments, the order of stay ought to have been directed to be continued.

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5. In the above facts and circumstances of the case, this Court finds no embargo to direct the appellate authority - 3rd respondent to take up the appeals preferred by the petitioner and dispose of the same on merits and in accordance with law by fixing a time frame. Accordingly, the 3rd respondent is directed to take up the appeals preferred by the petitioner either on 3.8.2015 or within a period of three months from the date of receipt of copy of this order. Till then, the respondents 1 to 3 are injuncted from encashing the Bank guarantee given by the 4th respondent Bank. Needless to mention that the Demand Drafts bearing Nos.064469 to 064474 for Rs.27,625,792/-, Rs.28,045,227/-, Rs.27,648,605/-, 34,607,182/-, Rs.12,103,291/- and Rs.35,485,635/- respectively dated 23.7.2015 issued by the 4th respondent Bank towards Bank Guarantee are directed to be returned to the petitioner, without being encashed.

6. The writ petitions stand disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Assistant Commissioner (CT),
Villivakkam Assessment Circle,
Villivakkam,
Chennai - 600 049,

2. The Assistant Commissioner (CT),
Pattaravakkam Assessment Circle,
Villivakkam,
Chennai - 600 049,

3. The Appellate Deputy Commissioner (CT),
Chennai (South),
3rd Floor, C.T.Building Annexe,
No.1, Greams road,
Chennai - 600 006,

4. The Manager,
Bank of America,
Solarpuria Windsor, 5th Floor,
B-Wing, No.3, Ulsoor Road,
Bangalore - 560 042.

+6 ccs to Mrs.R.Hemalatha, Advocate, sr.38325
+1 cc to The Special Government Pleader (Taxes), sr.38094.

W.P.Nos.22656 to 22661 of 2015

EV(CO)
KRA(18/08)

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