IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.23807 of 2015
and
M.P.No.1 of 2015

Chennai Petroleum Corporation Ltd.
Represented by its General Manager (Finance)
Paul Christudass Manali
Chennai- 600 068. ... Petitioner

Vs

1. The Deputy Commissioner (CT)-III (FAC)
5th Floor Dugar Towers
No.34 Marshalls Road
Egmore Chennai-600 008.

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

3. The Joint Commissioner(CT)
Large Taxpayers Unit Dugar Towers
Fifth Floor 34 Marshall Road
Egmore Chennai-600 008. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari to calling for the records on the files of the Third Respondent herein in Rc.1477/2015/A4 dated 23.06.2015 as confirmed in Rc.1477/2015/A4 dated 27.7.2015 quashing the same while directing the Third Respondent herein to admit the revision petition filed by the petitioners under Section 54 of the Tamil Nadu Value Added Tax Act 2006 on 12.05.2015.

For Petitioner : Mr.N.Inbarajan

For Respondents : Mr.S.Kanmani Annamalai,
Additional Government Pleader (T)

O R D E R

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who took notice for the respondents and with their consent, the main writ petition is taken up for disposal.

2. The petitioner has come forward with this writ petition challenging the orders of the 3rd respondent dated 23.06.2015 and 27.07.2015 and to direct the 3rd respondent to admit the revision petition filed under Section 54 of the Tamil Nadu Value Added Tax Act, 2006.

3.1 The petitioner, which is a Government of India Undertaking, having refineries in the State of Tamil Nadu, viz., at Manali and at Cauvery Basin, is involved in the activity of manufacture of various petroleum products such as LPG,Naphtha, LSHS, SKO-PDS, which fall under the I Schedule to the TNVAT Act. The petitioner also manufacture diesel and SKO for industrial use, which falls under the II Schedule of the TNVAT Act and crude oil which is the common input also falls under the I Schedule to the TNVAT Act.

3.2 According to the petitioner, Section 3(2) of the TNVAT Act, provides for levy of tax in respect of the goods falling under the I Schedule in which the benefit of input tax credit is also available on the purchase of goods falling under the I Schedule. The petitioner has also effected sales of goods falling under the II Schedule. It is the contention of the petitioner that they took up input tax credit on the purchase of crude oil and the input credit was used by them only on the sale of the I Schedule goods and they did not utilize the credit on the sale of the II Schedule goods. While so, the 1st respondent served assessment orders dated 03.02.2015 for the years 2012-13, 2013-14 and for the period from April 2014 to October 2014.

3.3 Against the said assessment orders, writ petitions in W.P.Nos.5938 to 5940 of 2015 were filed by the petitioner and this Court by order dated 19.03.2015, dismissed those writ petitions with liberty to the petitioner to approach the appellate authority and no coercive action should be taken till such time.

3.4 Accordingly, appeals were preferred before the appellate authority by the petitioner. The grievance of the petitioner is that though appeal with respect to assessment years 2012-13 and 2013-14 were admitted by the Joint Commissioner (CT) Appeals, though appeal was filed in respect of the assessment period from April 2014 to October 2014, which is the subject matter of the present writ petition, by depositing 25% of the disputed tax on 30.03.2015, the same was returned on 06.04.2015 with a memo to file proof for payment of 25% of the disputed tax. Accordingly, on 22.04.2015, the petitioner re-presented the appeal along with proof of payment of 25%, which was paid on 18.03.2015. After the said re-presentation along with the proof, the office of the 2nd respondent by audit memo dated 27.04.2015, rejected the appeal papers, stating that the assessment order came to be passed under Section 25 of the Act and hence a revision under Section 54 of the Act alone will lie.

3.5 Accordingly, the petitioner filed a revision petition before the 3rd respondent on 12.05.2015 along with a condonation of delay and stay application, which were returned as time barred by a communication dated 23.06.2015 and on receiving the return memo on 26.06.2015, the petitioner immediately presented a petition on the same day stating in detail that within the time limit revision was filed and hence to admit the revision petition. However, by office memo dated 27.07.2015, the office of the 3rd respondent has returned the revision papers by stating that revision is not maintainable and beyond limitation. Aggrieved over the same, the petitioner is before this Court.

4. I have perused the entire materials on record. The present writ petition is in respect of the assessment period from April 2014 to October 2014, covered by the provisional assessment of the year 2014-15. Originally the petitioner filed an appeal along with pre-deposit in time. The second respondent ought to have taken into account the said fact that the appellate jurisdiction was in time invoked. Similarly, the 3rd respondent also failed to consider the fact that the petitioner with bonafide belief deposited 25% of the disputed tax, which is not mandatory when the revision is an appropriate remedy. Hence, there is no justifiable reason for the 3rd respondent to reject the revision petition which was presented before him.

5. In view of the same, the impugned orders dated 23.06.2015 as well as 27.07.2015 are set aside and the revision petition filed by the petitioner along with the stay application be entertained by the revisional authority. The petitioner is permitted to re-present the revision along with other applications, within a period of two weeks from the date of receipt of a copy of this order. On such presentation as directed, the revisional authority shall entertain the same and pass appropriate orders on the stay application, within a period of two weeks thereafter. The revision petition shall also

be taken up for hearing and the same is directed to be disposed of, after affording due opportunity to the petitioner on merits and in accordance with law, within a period of twelve weeks thereafter. It is made clear that pending consideration of the stay application by the revisional authority, there shall not be any recovery proceedings against the petitioner.

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

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Mr.N.Inbarajan, Advocate, S.R.No.41931

W.P.No.23807 of 2015

SVI(CO)
CA(31/08/2015)