

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.26491 of 2015
and M.P.No.1 of 2015

M/s. Praxair India Pvt Ltd

[Petitioner]

Rep. by its Manager-Finance-Ranjeet Kumar
Plot No. F-18 SIPCOT Industrial Park
Sriperumbudur - 602 106
Kancheepuram District

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

[Respondents]

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records on the file of the 2nd Respondent in his impugned proceedings in TNGST. 1362543/2006-2007 dated 17.08.2015 quash the same.

For Petitioner सत्यमेव जयते Ms.R.Hemalatha

For Respondents : Mr.S.Manoharan Sundaram, AGP(T)

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O R D E R

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

2.The writ petition has been filed under Article 226 of the Constitution of India challenging the order of the 2nd Respondent in TNGST. 1362543/2006-2007 dated 17.08.2015.

3. The petitioner, being a private limited company, involved in the manufacture of Industrial gases and also generating power by using furnace oil. Originally they were assesseees on the files of the Assistant Commissioner (CT), Villivakkam Assessment Circle in TNGST No.136543. Subsequently, the assessment file has been transferred to the 2nd respondent's Assessment Circle, due to the change of address of the petitioner. For the assessment years 2006-07, pursuant to the filing of monthly returns by the petitioner, assessment order came to be passed on 03.09.2012 levying tax and penalty by the 1st respondent, which was communicated to the petitioner on 24.12.2012. Being aggrieved over the same, an appeal was preferred before the 3rd respondent, the Appellate Deputy Commissioner (CT) on 21.01.2013 after payment of 25% of the disputed tax, along with a stay application. In compliance of the direction issued by the appellate authority by order dated 19.11.2013, the petitioner has paid 25% of the disputed tax and executed a bank guarantee for the remaining 50% of the disputed tax and penalty, which is valid till 09.12.2015. When that being so, the 2nd respondent by proceedings dated 17.08.2015, initiated revenue recovery proceedings. Aggrieved over the same the petitioner is before this Court.

4. Admittedly, aggrieved over the orders of the 1st respondent, an appeal was filed before the 3rd respondent and the same is pending consideration. Before even disposal of the appeal, recovery proceedings sought to be initiated by the 2nd respondent by the impugned order dated 17.08.2015, which is improper. Once the conditional order is complied with, it is for the appellate authority to take up the appeal and pass appropriate orders on merits, after hearing the petitioner. Pending disposal of the appeal, it is not justifiable for the 2nd respondent to proceed against the petitioner for recovery.

5. Hence, the impugned order dated 17.08.2015 passed by the 2nd respondent is quashed. The petitioner is directed to appear before the appellate authority on 07.09.2015, on which date, the appeal proceedings shall be commenced and completed as expeditiously as possible in accordance with law.

The writ petition is disposed of with the above directions. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

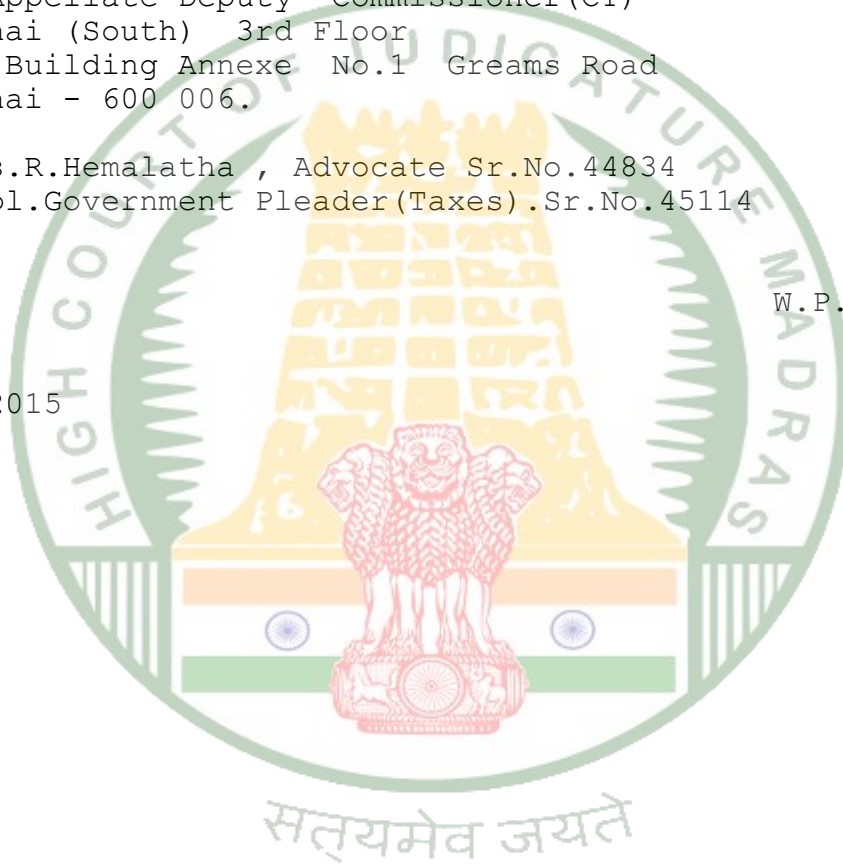
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To

- 1 The Assistant Commissioner(CT)
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Chennai (South) 3rd Floor
C.T. Building Annexe No.1 Greams Road
Chennai - 600 006.
- 1 cc to Ms.R.Hemalatha , Advocate Sr.No.44834
1 cc to Spl.Government Pleader(Taxes).Sr.No.45114

W.P.No.26491 of 2015

gr(co)
pmk.25.8,2015



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