IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.30561 to 30563 of 2015
and
M.P.Nos.1 of 2015

Schwing Stetter India (P) Ltd.
rep. by its General Manager (Accounts)
K.Sethuraman
No.F-71 SIPCOT Industrial Park
Irrungattukottai Sriperumbudur Tk.
Kancheepuram District [Petitioner in all WPs]

Vs

1 The Assistant Commissioner (CT)
Sriperumbudur Assessment Circle @
Varadharajapuram 602 103

2 The Appellate Deputy Commissioner Chennai (South)
3rd Floor C.T. Buildings Annexe
1 Greams Road
Chennai-6 [Respondents in all WPs]

Petitions W.P.Nos.30561 and 30562 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records on the files of the 2nd respondent herein in New SP No.136 & 137/2015 in AP No.5 and 6/2014 TNGST dated 9.9.2015 quashing the same while directing the 2nd respondent to entertain the applications dated 27.8.2015 filed by the petitioners seeking stay of recovery and arising out of A.P.No.05 and 06/2014 for the assessment year 2005-06 and 2006-07.

Petition No.30563 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records on the files of the 1st respondent herein in TIN : 33741662410/ 2013 dated 10.8.2015 quashing the same while forbearing the 1st respondent herein from proceeding to initiate recovery proceedings pending disposal of the appeal filed by the petitioners

For Petitioner : Mr.N.Inbarajan

For Respondents : Mr.S.Kanmani Annamalai,
Additional Govt. Pleader (Taxes)

C O M M O N   O R D E R

Heard the learned counsel for the petitioner and the learned Additional Government Pleaader (Taxes), who took notice for the respondents and with their consent, the main writ petitions are taken up for disposal.

2. While W.P.Nos.30561 and 30562 of 2015 have been filed challenging the orders of the 2nd respondent dated 9.9.2015 and for a direction to the 2nd respondent to entertain the applications dated 27.8.2015 filed by the petitioners seeking stay of recovery and arising out of A.P.No.05 and 06/2014 for the assessment year 2005-06 and 2006-07, W.P.No.30563 of 2015 has been filed challenging the order of the 1st respondent dated 10.8.2015 and to forbear the 1st respondent from proceeding to initiate recovery proceedings, pending disposal of the appeals filed by the petitioner.

3. According to the learned counsel for the petitioner, originally, challenging the assessment orders for the year 2005-06 and 2006-07, appeals were filed along with stay applications by the petitioner by remitting mandatory deposit of 25% of the tax demanded for both the assessment years. The appeals were taken on file by the 2nd respondent along with stay petitions filed by the petitioner. The appellate authority was pleased to grant an order of stay in both the petitions, directing the petitioner to pay another 25% of the disputed amount of tax before the Assessing Authority on or before 06.09.2013. The Appellate Authority has also imposed a further condition directing the petitioner to furnish bank guarantee in respect of balance amount of tax in both the stay petitions. Accordingly, both the conditions imposed by the appellate authority had been complied with by the petitioner. Further, according to the learned counsel for the petitioner, inadvertently, after the expiry of the stay period, the petitioner did not file any application in time for extending the stay and he has also not renewed the bank guarantee till the disposal of the appeals and therefore, on the expiry of the stay granted by the appellate authority, by the order impugned in W.P.No.30563 of 2015, recovery proceedings was initiated. Hence, the petitioner is before this Court.

4. The petitioner has paid 25% of the disputed tax for the respective assessment years at the time of filing the appeals.

Further, as directed by the Appellate authority, the petitioner also made payment of another 25% of the disputed amount. Further, the petitioner has also furnished bank guarantees for the balance tax amount for both the assessment years. However, the petitioner, according to the learned counsel for the petitioner, inadvertently, failed to file extension of stay petitions in time and renew the bank guarantees furnished already. Now, the extension of stay petitions filed by the petitioner were rejected by the appellate authority vide orders dated 09.09.2015 on the ground that the same were filed after a lapse of one and half years. In the meantime, recovery proceedings were initiated by the assessing officer vide order dated 10.08.2015. Since the revenue of the department is very much safeguarded by remitting 50% of the disputed tax for both the assessment years as well as furnishing bank guarantee for the remaining 50% of the disputed tax, this Court is of the view that the writ petitions may be disposed of with a direction to the petitioner to furnish bank guarantee for the balance 50% of tax amount for each of the assessment years within a stipulated time and on such filing, stay granted by the appellate authority shall be in force till the disposal of the appeals.

5. In view of the above, the writ petitions are disposed of by directing the petitioner to file bank guarantee as ordered by the appellate authority vide orders dated 07.08.2013 for the remaining 50% of the disputed tax before the assessing officer within a period of one week from the date of receipt of a copy of this order and on such filing, the order of stay granted by the 2nd respondent shall be in force till the disposal of the appeals. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1 The Assistant Commissioner (CT)
Sriperumbudur Assessment Circle @
Varadharajapuram 602 103

2 The Appellate Deputy Commissioner Chennai (South)
3rd Floor C.T. Buildings Annexe
1 Greams Road Chennai-6

1 CC to the Spl. Government Pleader, SR.No. 53111
+1 cc to Mr.N.Inbarajan, Advocate, sr.52972 (01/10/2015)

W.P.Nos.30561 to 30563 of 2015

RSK (CO)
PSI (30.09.2015)