IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.30650 of 2015
and M.P.No.1 of 2015

BASF Catalysts India Pvt Ltd [Petitioner]
(Rep. by B. Vaidyanathan
Managing Director)
No.E-17 & 18 Industrial Complex
Maraimalai Nagar

Vs

1 Assistant Commissioner (CT)
Chengalpattu Assessment Circle

2 Deputy Commissioner (CT)
(Appeals) South 3rd Floor C.T. Building
Annexe No.1 Greams Road Chennai - 600 006

[Respondents]

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus for quashing the proceeding of the First Respondent herein in CST.764814/2007-08 dated 14.09.2015 while forbearing the First Respondent from initiating recovery proceedings pending disposal of the appeal filed by the petitioners before the Second Respondent herein in A.P. No. 4/2015 arising out of the assessment year CST / 2007-08.

For Petitioner : Mr.N.Inbarajan
For Respondents : Mr.S.Kanmani Annamalai, AGP(T)

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 petition is taken up for disposal.

2. This writ petition has been filed challenging the order of the 1st respondent dated 14.09.2015 and to forbear the 1st respondent from initiating recovery proceedings, pending disposal of the appeal

filed by the petitioner before the 2nd respondent.

3. According to the learned counsel for the petitioner, originally, challenging the assessment order for the year 2007-08, an appeal was filed along with a stay application by the petitioner by remitting mandatory deposit of 25% of the tax demanded for the assessment year. The appeal was taken on file by the 2nd respondent along with stay petition filed by the petitioner. The appellate authority was pleased to grant an order of stay in the petition, directing the petitioner to pay another 25% of the disputed amount of tax before the Assessing Authority on or before 28.03.2015. The Appellate Authority has also imposed a further condition directing the petitioner to furnish bank guarantee in respect of balance amount of tax and penalty in the stay petition on or before 28.03.2015 valid upto six months. 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 appeal and therefore, on the expiry of the stay granted by the appellate authority, by the impugned order dated 14.09.2015, recovery proceedings was initiated. Hence, the petitioner is before this Court.

4. The petitioner has paid 25% of the disputed tax for the assessment year at the time of filing of the appeal. 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 guarantee for the balance tax amount and penalty for the assessment years. However, the petitioner, according to the learned counsel for the petitioner, inadvertently, failed to file extension of stay petition in time and renew the bank guarantee furnished already. Now, the extension of stay petition filed by the petitioner was rejected by the appellate authority vide order dated 18.09.2015 on the ground that the same were filed after a lapse of 21 days. In the meantime, recovery proceedings were initiated by the assessing officer vide order dated 14.09.2015. Since the revenue of the department is very much safeguarded by remitting 50% of the disputed tax for the assessment year as well as furnishing bank guarantee for the remaining 50% of the disputed tax and penalty, this Court is of the view that the writ petition may be disposed of with a direction to the petitioner to furnish bank guarantee for the balance 50% of tax amount and penalty for the assessment year within a stipulated time and on such filing, stay granted by the appellate authority shall be in force till the disposal of the appeal.

5. In view of the above, the writ petition is disposed of by directing the petitioner to file bank guarantee as ordered by the appellate authority vide order dated 26.02.2015 for the remaining 50% of the disputed tax and penalty 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 appeal. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1 Assistant Commissioner (CT)
Chengalpattu Assessment Circle

2 Deputy Commissioner (CT)
(Appeals) South 3rd Floor C.T. Building
Annexe No.1 Greams Road Chennai - 600 006.

1 cc to Mr..N.Inbarajan , Advocate Sr.No.52973
1 cc to Special Government Pleader(Taxes).Sr.No.53110

W.P.No.30650 of 2015

jsv(co)
pmk.30.9.2015