IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.30795 to 30799 of 2015
and
M.P.Nos.1 of 2015

ABB India Ltd (formerly ABB Ltd)
Rep. by its Vice President
Head-Zone-Chennai
Mr.Sridhar Thiagarajan
Prestige Palladium Bldg-1st Floor
129-140 Greams Road
Chennai - 600 006 [Petitioner in all WPs]

Vs

1 The Assistant Commissioner (CT)
Thyagaraya Nagar (East) Assessment Circle
46 Greanways Road Chennai - 600 028

2 The Appellate Deputy Commissioner (CT) (Central)
Commercial Taxes Building Annex
Second Floor Greams Road
Chennai - 600 006

3 The Joint Commissioner (CT) (Central)
Commercial Taxes Building
Greams Road Chennai - 600 006 [Respondents in all WPs]

Petitions filed under Article 226 of the Constitution of India to issue a Writ of mandamus directing the 1st Respondent to forbear from initiating any recovery steps pursuant to the proceedings in CST/813907/2007-08 to 2009-10 dated 30.04.2013 and TIN.33651561628/2008-09 and 2009-10 dated 18.12.2013 respectively pending disposal of A.P. No.34 to 36 of 2014 and 109 and 110 of 2014 respectively by the 2nd Respondent.

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 petitions are taken up for disposal.

2. These writ petitions are filed for the issuance of a writ of mandamus to forbear the 1st respondent from initiating any recovery steps pursuant to the proceedings in CST/813907/2007-08 to 2009-10 dated 30.04.2013 and TIN.33651561628/2008-09 and 2009-10 dated 18.12.2013 respectively pending disposal of A.P. No.34 to 36 of 2014 and 109 and 110 of 2014 respectively by the 2nd Respondent.

3. According to the learned counsel for the petitioner, originally, challenging the assessment orders of the 1st respondent for the years TNVAT/2008-09 and 2009-10 and CST/2007-08 to 2009-10, appeals were filed along with stay applications by the petitioner by remitting mandatory deposit of 25% of the tax demanded for all the assessment years before the Appellate Deputy Commissioner (CT) III, Chennai. The appeals were taken on file along with stay petitions filed by the petitioner. The appellate authority was pleased to grant an order of stay in all the petitions, directing the petitioner to pay another 25% of the disputed amount of tax before the Assessing Authority. The appellate authority has also imposed a further condition directing the petitioner to furnish bank guarantees in respect of balance amount of tax and penalty in all the stay petitions. Accordingly, both the conditions imposed by the appellate authority had been complied with by the petitioner and the bank guarantees so furnished are also in force upto 14.02.2016 (TNVAT/2008-09), 19.02.2016 (TNVAT/2009-10) and 28.02.2016 (CST/2007-08 to 2009-10).

4. It is the submission of the learned counsel for the petitioner that the appellate authority though heard the matters in part, inspite of readiness of the petitioner to complete the appeals, the same have not been disposed of. In the meantime, since the stay orders granted were in operation only for a period of six months, the petitioner filed stay extension applications, on which the 2nd respondent had extended the stay orders for three months. Since the said three month period was to expire on 31.10.2014, the petitioner has filed again stay extension applications in all the aforesaid

appeals. However, the same are yet to be heard and disposed of by the 2nd respondent.

5. When that being the position, according to the learned counsel for the petitioner, the appeals filed before the Appellate Deputy Commissioner (CT) III, Chennai, were transferred and re-numbered as A.P. No.34 to 36 of 2014 and 109 and 110 of 2014 respectively to be heard by the Appellate Deputy Commissioner (CT) Central, Chennai, the 2nd respondent herein. However, the appellate authority, who had earlier heard the appeals continued to retain jurisdiction over the same as the 2nd respondent herein.

6. Be that as it may, according to the learned counsel for the petitioner, on 08.09.2015, the 3rd respondent herein issued a notice directing the petitioner to produce stay orders for the years TNVAT/2008-09 and 2009-10, in the absence of which, recovery action will be initiated. Immediately thereafter, the petitioner took up the matter with the 2nd respondent requesting to pass orders on the pending extension of stay applications, who expressed her willingness to take up the appeals.

7. Further, according to the learned counsel for the petitioner, the 2nd respondent once again heard all the appeals on 21.09.2015, however, no orders were passed till date. The 1st respondent had made it very clear that in the absence of production of stay extension orders, recovery proceedings would be initiated. It is the submission of the learned counsel for the petitioner, the petitioner also approached the 3rd respondent on 21.09.2015 and 23.09.2015, who also reiterated the same. Apprehending recovery action would be initiated, 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 and penalty wherever applicable for all the assessment years and they are still in force till February 2016. However, according to the learned counsel for the petitioner, the extension of stay petitions filed by the petitioner were not heard. In the meantime, on 08.09.2015, the 3rd respondent herein issued a notice directing the petitioner to produce stay orders for the years TNVAT/2008-09 and 2009-10, in the absence of which, recovery action will be initiated. Since the revenue of the department is very much safeguarded by remitting 50% of the disputed tax for all the assessment years as well as furnishing bank guarantee for the

remaining 50% of the disputed tax and penalty wherever applicable, which are still in force till February 2016, this Court is of the view that the appeals are to be disposed of within a stipulated time and the recovery proceedings shall be kept in abeyance till the disposal of the appeals.

5. In view of the above, the 2nd respondent/appellate authority is directed to take up the appeals in A.P. No.34 to 36 of 2014 and 109 and 110 of 2014 respectively and dispose of the same on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order and till such time no recovery proceedings need be initiated as against the petitioner. It is made clear that the stay of original assessment orders shall be in force till the disposal of the appeals. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

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To

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1 CC to Mr.N.Inbarajan, Advocate SR.No. 52974
1 CC to the Spl.Government Pleader (Taxes), SR.No. 53271

W.P.Nos.30795 to 30799 of 2015

RSK (CO)PSI (01.10.2015)