IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.No.31030 of 2015
and
M.P.No.1 of 2015

M/s.Southern Agrifurnace
Industries (P) Limited,
Rep by its Director P.
Shanmugham S/o.Ponniah
No.6 (36)Krishnaswamy Avenue,
Luz Mylapore, Chennai 4.

... Petitioner

-Versus-

1.The Deputy Commissioner of Income Tax
Corporate Circle 6 (2)
Room No.705 7th Floor,
Vanaparathy Bloc 121 M.G. Road,
Nungambakkam, Chennai 34.

2.The Assistant Commissioner of
Income Tax Non Corporate Circle 15 (1) 121
M.G.Road Nungambakkam Chennai 34.

3.The Commissioner of Income Tax (Appeals),
121 M.G.Road,
Nungambakkam, Chennai 34.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus calling for the records in SP/Corp Cir-6 (2)/AAGCS9705F/2015-16 dated 14.9.2015 on the file of the 1st respondent and to quash the same and further directing the 2nd respondent not to initiate or continue with any other proceedings for coercive recovery of the disputed demand during the pendency of the appeal before the 3rd respondent

For Petitioner : Dr.Anita Sumanth

For Respondent(s) : Mr.T.Pramodkumar Chopda, Senior Standing Counsel

ORDER

Challenging the order of the 1st respondent dated 14.09.2015 refusing to grant an order of stay, the petitioner is now before this court with this writ petition.

2. The case of the petitioner in brief is that the petitioner is a company engaged in the manufacture and distribution of Indian Made Foreign Liquor and an assessee in terms of the provisions of the Income Tax Act. The petitioner has been filing its returns of income regularly in accordance with the provisions of the Income Tax Act.

3. According to the petitioner company, as a part of its business transaction, it had entered an agreement with various entities for provision of infrastructure for manufacture of liquor for rendition of bottling and labelling services and as per the agreement, the role of the petitioner company was limited to provision of infrastructure and space. As usual, the petitioner filed return for the assessment year 2012-13 and disclosed various items of receipts and expenditure. The financials disclosed an amount of Rs.9,33,63,000/- which related to the sale consideration of other brand liquor of the companies that had been paid over to the companies and this constituted expenditure for the petitioner. Pursuant to bottling and labelling, the petitioner sold the liquor both its own brand as well as the brands of companies to TASMAC and remitted the sale consideration attributable to each company after deducting a flat contracted rate towards its charges in connection with bottling. According to the petitioner, the assessing authority did not initially raise any query relating to labelling and provision of infrastructure. While so, to the shock of the petitioner, the assessing authority raised a query relating to sale consideration passed on to the companies and reflected as payment to 'brand owners' in its financial. It was explained that the payment represented the consideration from sales of the third party brand of liquors, passed on by the petitioner to the respective companies. While so, an order of assessment came to be passed on 31.03.2015 making additions / disallowances of an addition of Rs.9,33,63,000/-. According to the petitioner company, the order is cryptic, non speaking and contrary to the provisions of the Income Tax Act. It was the said order taken on appeal to the 3rd respondent / Commissioner of Income Tax (Appeals) and the same is pending. In the mean while, the 1st respondent while rejecting the petition for stay called upon the petitioner to pay 50% of the disputed demand on or before 21.09.2015. The said order is now under challenge in this writ petition.

4. Heard both sides and also perused the records carefully.

5. Though the order refusing to grant an order of interim stay is put under challenge in this writ petition, the learned counsel appearing for the petitioner submitted that the petitioner would be satisfied if a direction is issued to the 3rd respondent concerned to dispose of the stay petition filed by the petitioner within a time frame and until then, the authority concerned may be directed not to take any coercive action for recovery of amount allegedly due to the department.

6. The learned standing counsel for the respondents submitted that the application for stay can be moved before the jurisdictional commissioner and on such filing of stay petition, the same be disposed of.

7. Considering the facts and circumstances of the case and in view of the submissions made by the learned counsel for both sides, this court directs that the stay petition pending before the Commissioner of Income Tax (Appeals), the 3rd respondent herein, be taken and disposed of on merits and in accordance with law within a period of two weeks from the date of receipt of a copy of this order and until then there shall not be any recovery proceedings.

8. The writ petition is disposed of with the above directions. No costs. Consequently, connected MP is closed.

-Sd/-
Assistant Registrar(LA)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Deputy Commissioner of Income Tax
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2.The Assistant Commissioner of
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3.The Commissioner of Income Tax (Appeals),
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+1 CC to Dr.Anita Sumanth Advocate. Sr.No.54079
+1 CC to MR.T.Pramod Kumar Chopda Advocate. Sr.No.54360

W.P.No.31030 of 2015

CO-NM
JD(08/10/2015)