IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.Nos.40315 and 40316 of 2015

and

M.P.Nos.1+1 and 2+2 of 2015

Chennai Petroleum Corporation Ltd.,
Represented by its
Chief Manager (Finance),
Dr.S.Sivarama Krishnan,
No.536, Anna Salai,
Chennai 600 018. ..Petitioner in both the petitions

Vs.

1.The Deputy Commissioner (CT)-III (FAC),
Large Tax payers Unit,
Chennai 600 008.

2.The Joint Commissioner(CT) (Appeals),
CT Annexe Building III Floor,
Greams Road,
Chennai 600 006. .. Respondents in both the petitions

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent herein, in TIN:33491560843/2012-13 and TIN:33491560843/2013-14, dated 10.12.2015 quashing the same in so far as it relate to recovery of tax in respect of assessment years TNVAT/2012-13 and TNVAT/2013-14, while forbearing the first respondent from initiating recovery proceedings pending disposal of the applications for extension of stay filed by the petitioners on 09.12.2015 before the second respondent and arising out of A.P.Nos.65 and 64 of 2015.

For Petitioner : Mr.N.Inbarajan
(For both the petitions)

For Respondents: Mr.S.Kanmani Annamalai,
Additional Government Pleader
(For both the petitions)

COMMON ORDER

By consent, the writ petitions are taken up for final disposal.

2. The writ petitions are filed to quash the order of the first respondent made in TNVAT/2012-13 and TNVAT/2013-14, in respect of recovery of tax for the assessment years 2012-2013 and 2013-2014 and forbear the first respondent from initiating the recovery proceedings pending disposal of the applications for extension of stay in A.P.Nos.65 and 64 of 2015.

3. The case of the petitioner Corporation is that they are the Government of India undertaking and in respect of assessment years TNVAT/2012-13 and TNVAT/2013-14, the petitioner was assessed by the first respondent by his proceedings dated 03.02.2015. Aggrieved by the order passed by the first respondent, the petitioner has filed statutory appeals along with applications for stay.

4. The petitioner would state that at the time of filing of the appeals, the petitioner deposited 25% of the disputed taxes and made applications for stay of recovery of balance amount. The second respondent by the order dated 11.06.2015, directed the petitioner to deposit further 25% of the disputed tax and furnish a bank guarantee for the balance tax amount and penalty, on or before 09.07.2015 and granted stay till 10.12.2015. The petitioner has complied with the orders and filed applications for extention of stay on 09.12.2015. Since the second respondent did not attend the office on account of an accident to his close relative, the petitions were not taken up for hearing.

5. The petitioner would further state that while the said applications were pending, the first respondent initiated proceedings to recover the balance amount and penalty. Hence, the present writ petitions have been filed.

6. Heard the submissions of Mr.N.Inbarajan, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents.

7. In similar circumstances, My Brother Mr.Justice R.Mahadevan in Writ Petition Nos.30795 to 30799 of 2015 has held that 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, the recovery proceedings shall be kept in abeyance till the disposal of the appeal.

8. In the instant case, it is not in dispute that the statutory appeals filed by the petitioner are pending in A.P.Nos.64 and 65 of 2015 and the petitioner has remitted 50% of the disputed tax and furnished bank guarantee for remaining amount for both the assessment years. In view of the above facts, the impugned orders are set aside and the writ petitions are allowed.

9.The second respondent appellate authority is directed to adjudicate the Appeal Nos.64 and 65 of 2015 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 has been initiated 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. Consequently, connected miscellaneous are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

cla
To
1.The Deputy Commissioner (CT)-III (FAC),
Large Tax payers Unit,
Chennai 600 008.
2.The Joint Commissioner(CT) (Appeals),
CT Annexe Building III Floor,
Greams Road,
Chennai 600 006.
+1 cc to the Special Government Pleader (Taxes)sr 69324
+ 1 CC to Mr.N.INBARAJAN, Advocate sr no 69078[25/5/16]
W.P.Nos.40315 and 40316 of 2015

aa08/01/2016