IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.6044 to 6046 of 2015
and M.P.Nos.1 to 1 of 2015 (3 MPs)

Luminous Power Technologies Pvt.Ltd.,
Rep. By its Senior Officer-Commercial
P.Anand
No.4, 2nd Main Road, Saraswathipuram
Nagalkeni, Chennai-44 .. Petitioner in all the above WPs.

Vs.

1.The Appellate Deputy Commissioner(C.T)(East)
C.T.Building, Annexue 3rd floor
Greams Road, Chennai-6

2.The Assistant Commissioner (CT)
Tambaram-I Assessment Circle
Shanmugam Road, West Tambaram
Chennai-600 045
.. Respondents in all the above WPs.

Prayer in W.P.6044/2015:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the Order in SP.No.28/2015 in APV/372/2014/East dated 29.01.2015 passed by the 1st respondent, quash the same and to direct the 1st respondent to hear and dispose of Appeal No.372 of 2014 without insisting on any deposit and Bank Guarantee.

Prayer in W.P.6045/2015:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the Order in SP.No.29/2015 in APV/295/2014/East dated 29.01.2015 passed by the 1st respondent, quash the same and to direct the 1st respondent to hear and dispose of Appeal No.295 of 2014 without insisting on any deposit and Bank Guarantee.

Prayer in W.P.6046/2015:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the Order in SP.No.30/2015 in APV/373/2014/East dated 29.01.2015 passed by the 1st respondent, quash the same and to direct the 1st respondent to hear and dispose of Appeal No.373 of 2014 without insisting on any deposit and Bank Guarantee.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.V.Haribabu, Addl.Govt.Pleader(Taxes)

ORDER

The Writ Petitioner has come forward with the aforesaid prayer, challenging the order of the 1st respondent dated 29.01.2015 and for a direction to the first respondent to hear and dispose of Appeals without insisting on deposit and Bank Guarantee.

2.Heard both sides.

3. The petitioner company is an assessee on the file of the 2nd respondent and dealing with Long Backup Uninterrupted Power Supply (LB-UPS) and on its sale during the relevant year, the petitioner paid tax at 4% under sub-entry 27 in Entry 68 of Part-B of First Schedule of Tamil Nadu Value Added Tax Act, 2006 (in short TNVAT Act, 2006) According to the petitioner, the first respondent assessed the sales turnover of LB-UUPS at 12.5%, however it is liable to tax at 4% or 5% under sub-entry 27 in Part B of First Schedule, as the issue has already settled by the Supreme Court in SLP(Civil)/CC.No.15021/2010 dated 15.02.2010 (Goyal Motor Parts Vs. State of Punjab - (2011) 38 VST 159(P&H)). Aggrieved by the order of the second respondent-original authority, the petitioner preferred appeal before the first respondent-appellate authority after complying with the condition of payment of admitted tax and 25% disputed tax and praying for stay of balance amount of tax. The first respondent heard the matter and passed the impugned order dated 29.01.2015, wherein, the petitioner was directed to pay another 25% of the disputed tax and file bank guarantee for the balance of tax on or before 28.02.2015 for the assessment years 2009-10, 2010-11 and 2011-12. Aggrieved by the said order, the petitioner has come forward with this petition.

4. Proviso to Section 52(4) of the TNVAT Act, 2006 reads as follows:-

> "(4) Notwithstanding that an appeal has been preferred under sub-section (1), the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred :
>
> Provided that the Appellate Deputy Commissioner may, in his discretion, give such directions as he thinks fit, in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to his satisfaction, in such manner, as may be prescribed : "

5. The pre-deposit of 25% is the condition precedent for filing appeal before the appellate authority and the same has been complied with by the petitioner. The appellate authority, exercising his power under Clause (6) of Section 220 is indeed a discretionary one. However, it is one coupled with a duty to be exercised judiciously and reasonably, based on relevant grounds. It should not be exercised arbitrarily or capriciously or based on matters extraneous or irrelevant. However, in exercising his power, the Income-tax Officer should not act as a mere tax-gatherer but as a quasi-judicial authority and consider the matter in all its facets, from the point of view of the assessee without at the same time sacrificing the interests of the Revenue. Thus, it is left to the discretion of the appellate authority to grant or not to grant stay and also to impose conditions for grant of stay or to completely waive the pre-deposit. In this case, the appellate authority has exercised his discretionary powers and directed the petitioner to pay another 25% of the disputed tax and file bank guarantee for the balance of tax on or before 28.02.2015 for the assessment years 2009-10, 2010-11 and 2011-12, which, in my opinion, cannot be said to be illegal in order to interfere with the same.

6. The learned counsel for the petitioner submitted that since 25% of the disputed tax as provided under the Act has been paid by the petitioner while preferring appeal, the conditions stipulated for the grant of stay by the appellate authority will cause hardship to the petitioner.

7. I am not inclined to accept the submission made by the learned counsel for the petitioner. The powers granted to the appellate authority by the Statute are wide and the same cannot be interfered with by this Court, unless it was exercised arbitrarily or capriciously. Further, it is a settled principle of law that the writ Court is not certainly sitting in appeal over each and every order passed by the statutory authority. The task of the writ Court to examine the decision-making process was found in the decision reported in "State of UP versus Maharaja Dharmedar Prasad Singh" reported in AIR 1989 SC 997. The writ Court is averse to interfere with the acts and actions of the statutory authorities unless those are beyond jurisdiction or in excess of jurisdiction.

8. In the light of the above discussion and in view of the facts and circumstances, this Court is inclined to modify the order of the appellate authority with regard to Bank Guarantee alone and that instead of petitioner furnishing bank guarantee for the balance of tax, Personal Bond shall be furnished. As far as the other condition towards payment of 25% of the disputed tax, the petitioner shall deposit the same on or before 30th April 2015 since the time granted by the appellate authority has already expired and report such compliance to the first respondent.

9. The Writ Petitions are disposed of with the above direction. No costs. Connected MPs are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Appellate Deputy Commissioner(C.T)(East)
C.T.Building, Annexue 3rd floor
Greams Road, Chennai-6

2.The Assistant Commissioner (CT)
Tambaram-I Assessment Circle
Shanmugam Road, West Tambaram
Chennai-600 045

1 cc to Mr. Joseph Prabakar, Advocate, Sr. 12453
1 cc to Spl.Government Pleader, Sr. 12416

W.P.Nos.6044 to 6046 of 2015

KGK (CO)
kk 9/3