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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :17.03.2015

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THE HONOURBLE MR.JUSTICE B.RAJENDRAN

W.P(MD).No.3622 of 2015
and
M.P.(MD)Nos.1 and 2 of 2015

M/S.BUNGE INDIA PRIVATE LTD.,
REP. BY ITS AUTHORISED
SIGNATORY J.VENKATARAMAN,
MADURAI ROAD,
EDAMALAIPATTUPUDUR,
TRICHY. ..Petitioner

Vs.

1. THE APPELLATE DEPUTY COMMISSIONER (CT),
COURT CAMPUS, TRICHY.

2. THE ASSISTANT COMMISSIONER(CT),
SRIANGAM ASSESSMENT CIRCLE, TRICHY. ..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorarified Mandamus calling for the records pertaining to order dated 3.3. 2015 passed in SP No.124/2014 in VAT AP No.225/2014 issued by the 1st respondent and to quash the same as illegal arbitrary and in violation of the principles of natural justice and direct the 1st respondent to dispose the appeal filed by the petitioner in VAT AP No 225/2014 within the stipulated period and further to direct the 2nd respondent to defer their recovery proceedings till the disposal of the appeal by the 1st respondent.

For petitioner : Mr.S.Karunakar
For Respondents : Mr.A.Muthukaruppan
Additional Government Pleader

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ORDER

Mr.A.Muthukaruupan, learned Additional Government Pleader takes notice for the respondents.

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

3. The only point which has been raised is earlier an order of stay was granted by the first respondent vide order dated 04.09.2014. As per the stay, 25% of the balance was directed to be deposited, which has been deposited. Along with the appeal originally 25% deposited. Totally, the petitioner has deposited 50%. After six months period, when they sought for extention of stay, that was rejected on the ground to pay back the entire balance 50% of the tax as well as the penalty. In fact, they also given a bank guarantee for the entire balance amount and also for the penalty and without taking into consideration that the delay also is on the part of the department, as they have not completed the enquiry, the present order is challenged. To show their *bona fide*, they have

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extended their bank guarantee for the remaining balance of 50% as well as the penalty amount. The petitioner is willing to pay another 10% of the tax amount alone.

4. The learned Additional Government Pleader appearing for the respondents would state that there are appeals pending which have to be completed within 31st March 2015 and also on their own accord, they have asked two adjournments, but the appeal could not be completed in time. But as per Section 51(4) of the Tamil Nadu Value Added Tax Act, 2006, the respondents have entitled to seek for tax.

5. Heard the learned counsel for the petitioner and the learned Additional Government Pleader.

6. In a similar occasion, I had an occasion to deal with the matter in W.P.(MD).No.20273 of 2013, dated 16.12.2013. In paragraph No.5, I have observed as follows:-

> "5. In an unreported judgment of the Division Bench of this Court made in W.A.(MD).No.194 of 2005, dated 13.07.2006, this Court has stated as follows:-
>
> > "2.When the appellant preferred a statutory appeal before the first respondent, as a condition precedent for filing an appeal, the appellant deposited 25% of the tax assessed. It is stated that as per the interim orders of the first respondent, the appellant has also paid another 20% of the assessed tax which is under challenge before the first respondent.
> >
> > 3. In such circumstances, we feel that the interim order of stay granted by the first respondent can be directed to be continued subject to the appellant furnishing a personal bond for the remaining tax amount as well as penalty.
> >
> > 4. Subject to such modification, the Writ Appeal stands disposed of. The order of the learned Single Judge is also modified to the above extent. Such personal bond shall be furnished by the appellant within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

7. In view of the earlier orders and also taking into consideration of the fact that the petitioner has already paid 50% of the entire tax amount and also given a bank guarantee not only for 50% but also for the entire penalty amount and that the stay was in force for the period of six months, within which, the appeal could not be completed, that cannot be a reason to compel the petitioner to pay the entire balance amount, this Court is of the view that the petitioner shall pay another 10% of the disputed tax amount, within a period of three weeks from the date of receipt of a copy of this order and on such payment, the stay shall have to be extended till the disposal of the appeal. It is made clear that the bank guarantee will be renewed till the disposal of the appeal. The extended bank guarantee shall also be produced within 10 days from the date of receipt of a copy of this order and the bank guarantee shall be extended for a period of one year.

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8. The Writ Petition stands allowed to the extent indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1. THE APPELLATE DEPUTY
COMMISSIONER (CT),
COURT CAMPUS, TRICHY.

2. THE ASSISTANT COMMISSIONER(CT),
SRIANGAM ASSESSMENT CIRCLE, TRICHY.

+1CC to M/s.S.Karunakar, Advocate in SR.13017
+1CC to the Special Government Pleader in SR.13221

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