IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.No.34494 of 2015 & MP.Nos.1 & 2 of 2015
and
WP.No.34495 of 2015 & MP.No.1 of 2015

M/s.Wipro Enterprises Pvt. Ltd.,
[Previously known as M/s.Wipro Enterprises Ltd.]
[Rep by its Senior Accounts Executive]
Mr.Raghavan Seshadri
No.33 & 34, Ganesh Nagar,
G.K.Industrial Estate,
Chennai-116. ... Petitioner in both WPs

Vs

1.Assistant Commissioner [CT],
Porur Assessment Circle,
65/1, Kundrathur Main Road,
Madanandapuram,
Chennai-125.

2.Appellate Deputy Commissioner [CT]-South,
3rd Floor, CT Building Annexe,
1, Greams Road,
Chennai-6.

3.Commissioner of Commercial Taxes,
Chepauk, Ezhilagam Complex,
Commercial Taxes Department,
Chennai 05.

4.Government of Tamil Nadu
Rep by its Secretary,
Commercial Taxes Department,
Fort St. George,
Chennai-9. ... Respondents in both WPs

Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records relating to the Recovery Notices in CST.793805/2010-11 and CST.793805/2009-10 respectively dated 7th September, 2015 issued by the 1st respondent, quash the same.

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For Petitioner in all WPs : Ms.R.Charulatha for M/s.LakshmiKumaran Associates

For Respondents in all WPs : Mr.K.Venkatesh, Government Advocate

C O M M O N   O R D E R

Heard Ms.R.Charulatha, learned counsel appearing for the petitioner; Mr.K.Venkatesh, learned Government Advocate appearing for the respondents and with the consent on either side, the writ petitions are taken up for disposal.

2. In both the Writ Petitions, the petitioner challenges the Recovery Notices dated 07.09.2015 issued by the 1st respondent for the Assessment Years 2009-10 and 2010-11 under the provisions of Central Sales Tax Act, 1956. The petitioner has filed appeals before the Appellate Deputy Commissioner-the 2nd respondent and the petitioner has complied with the pre-deposit condition by paying 25% of disputed tax and has furnished a Bank Guarantee for the remaining amount, which is kept valid till date. However, the authority in a most arbitrary manner, passed an order of stay for a period of six months or till the disposal of the appeal whichever is earlier. Normally, even this Court, while granting such limited stay subject to the disposal of the main matter, would state that order of stay will continue till the time limit or the disposal of the matter whichever is later. Therefore, this Court finds that the wordings adopted by the Appellate Authority in the said order is not tenable.

3. Be that as it may, the interest of revenue has been fully secured as the petitioner paid 25% of disputed tax and furnished a Bank Guarantee for the remaining amount. Therefore, there should not be any recovery proceedings initiated in the meantime. If done so, the very Appeal itself would become infructuous. Therefore, the Writ Petitions are allowed and the impugned Recovery Notices CST.793805/2010-11 and CST.793805/2009-10 dated 07.09.2015 issued by the 1st respondent are set aside and there shall be a direction to the 2nd respondent to hear and dispose of the Appeal Petitions pending before him, after affording an opportunity of personal hearing and pass orders on merits in accordance with law within a period of six weeks from the date of receipt of a copy of this order.

4. Learned counsel for the petitioner submitted that during the pendency of the Appeal Petitions, the petitioner also filed a petition for rectification of certain errors which have crept in the Orders of Assessment by invoking Section 84 of Tamil Nadu Value Added Tax Act, 2006.

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5. These applications had not been entertained by the Assessing Officer stating that the order is the subject matter of appeal. The Assessing Officer is justified to an extent in saying so because there is stay granted by the Appellate Authority. But, since this Court has directed the Appellate Authority to dispose of the Appeals, the points which have been raised by the petitioner in an application under Section 84 Tamil Nadu Value Added Tax Act, 2006 can be canvassed before the Appellate Authority by raising additional grounds. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner [CT],
Porur Assessment Circle,
65/1, Kundrathur Main Road,
Madanandapuram,
Chennai-125.

2.The Appellate Deputy Commissioner [CT]-South,
3rd Floor, CT Building Annexe,
1, Greams Road,
Chennai-6.

3.The Commissioner of Commercial Taxes,
Chepauk, Ezhilagam Complex,
Commercial Taxes Department,
Fort. St. George, Chennai-9.

4.The Secretary,
Government of Tamil Nadu,
Commercial Taxes Department,
Fort St. George, Chennai-9.

+2cc's to M/s.LakshmiKumaran Associates, Advocate,
S.R.No.51186
+1cc to the Government Pleader, S.R.No.51186

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& MP.Nos.1 & 2 of 2015
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CA(27/09/2016)

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