IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.06.2016

Coram

The Hon'ble Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.3141 to 3143, 6294 to 6296
and 8015 of 2016 (7 cases)
+
W.M.P.Nos.2578 to 2580,
5615 to 5617 & 7121 of 2016

W.P.No.3141 of 2016 to 3143/16:-

M/s.Indian Oil Corporation Ltd.,
(rep. by its Chief Finance Manager
Mr.P.Radhakrishnan)
"Indian Oil Bhavan",
139, Mahatma Gandhi Road,
Chennai - 600 034.

W.P.No.6294 of 2016 to 6296/16:

M/s. Indian Oil Corporation Limited
(Represented by its
Senior Manager (Finance)
J. Boominathan)
Ïndian Oi Bhavan",
139, Mahatma Gandhi Road,
Chennai 600 034.

W.P.No.8015 of 2016:

Chennai Petroleum Corporation Ltd.,
Represented by its General Manager
(Finance)
Mr.A. Paul Christudass,
NO.536, Anna Salai,
Chennai 600 018. ...Petitioners

Vs.

1. The Deputy Commissioner (CT)-IV (FAC)
Large Taxpayers Unit,
No.34, Dugar Towers, Fifth Floor,
Marshalls Road,
Egmore, Chennai - 600 008.

2. The Joint Commissioner (CT) (Appeals)
CT Annexe Building, III Floor,
Greams Road, Chennai - 600006. ..Respondents in all WPs.

Writ Petitions/ filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records from the file of the second respondent in S.P.Nos.110/15, 111/15, 112/15, 10/16, 11/16, 12/16, and 24/16, in A.P.Nos.129/15, 130/15, 131/16, 13/16, 14/16, 15/16, and 35/16, dated 07.01.2016, 05/01/16, 05/01/16, 02.02.2016, 02.02.2016, 02.02.2016 and 22.02.2016 for TNVAT 2006-07, TNVAT 2007-08, TNVAT 2008-09, TNVAT 2009-10, 2010-11, TNVAT 2011-12, and 2010-11, respectively and quash the same, and to direct the second respondent to dispose of the Appeals on merits, without imposing any further condition as stipulated therein.

For Petitioners : Mr.C.Natarajan Senior Counsel for Mr.N.Prasad in all W.Ps.

For Respondents : Mr.V.Haribabu Additional Government Pleader

COMMON O R D E R

These Writ Petitions, viz., W.P.Nos.3141 to 3143 and 6294 to 6296 of 2016, have been filed by M/s.Indian Oil Corporation Ltd., (for short, 'IOCL'), seeking for issuance of a writ of certiorari to quash the orders passed by the second respondent/Joint Commissioner (CT) (Appeals) in Applications praying for stay of collection of the balance amount of tax, demanded from them, and consequently, to direct the second respondent to dispose of the Appeals filed by the petitioner.

2. Writ Petition No.8015 of 2016 has been filed by Chennai Petroleum Corporation Limited (in short, 'CPCL'), seeking for the same prayer, as sought for by the petitioner/IOCL.

3. Since the issue involved in all the Writ Petitions are one and the same, these Writ Petitions are taken up together, and with consent on either side, disposed of by this common order.

4. Heard Mr.C.Natarajan, learned Senior Counsel, representing M/s.N.Inbarajan, learned counsel for petitioners, and Mr.V.Haribabu, learned Additional Government Pleader, for respondents.

5. It may not be necessary to go into the factual aspects of the matters, as to what was the nature of transaction, as to how the Assessing Authority proceeded with the matter, etc., for the simple reason that, this Court is called upon to examine as to whether the exercise of discretion by the Appellate Authority, while granting order of stay is proper and justified.

6. It is not in dispute that the petitioner, while filing Appeal Petitions, have effected pre-deposit of 25% of the disputed tax. The petitioner's prayer was for grant of absolute stay till the Appeal Petitions filed by them are disposed of. The Appellate Authority took up the Stay Petitions for consideration, and granted stay subject to two conditions. The first condition is to pay 25% of the disputed tax, and the second condition is to furnish bank guarantee for the remaining amount. So far as second condition is concerned, viz., the condition requiring the petitioner to furnish bank guarantee, this Court, in several cases, interfered with such condition, taking into consideration the plight of the dealer and the balance of convenience, especially, when pre-deposit has been effected and to safeguard the revenue, and modified the condition as one of furnishing personal bond.

7. In the cases on hand, there is no reason as to why such indulgence should not be shown to the petitioners, moreso when the petitioners are State owned Corporations. Now, coming to the first condition, directing the petitioner to pay 25% of the disputed tax, i.e. over and above the pre-deposit amount already effected, it would be beneficial to take into consideration, the decision of the Hon'ble Supreme Court, in the case of (Bharat Petroleum Corporation Ltd., Vs. Commissioner of Sales Tax and others) reported in (2008) 17 VST 162 SC. In the said case, the issue was as to whether the sale of superior kerosene oil by Bharat Petroleum Corporation Limited (BPCL) to another Oil Company, via PDS route, was exempted from sale tax, in terms of the notification issued under the provisions of Orissa Sales Tax Act. Before the Assistant Commissioner of Sales Tax, application was filed for grant of stay, which was refused, as against which, Revision was preferred before the Commissioner of Commercial Taxes, who partly allowed the Revision Petition, and directed the appellant therein to pay a sum of Rs.65,00,000/-. This order was questioned in a Writ Petition before the High Court of Orissa, and the High Court directed the appellant to pay Rs.20,00,000/- , pending hearing of the Appeal by the Assistant Commissioner of Sales Tax. Challenging the said order, Appeal was preferred to the Hon'ble Supreme Court. The Hon'ble Supreme Court pointed out that normally, the Supreme Court does not interfere in interim matters, particularly, when matters concern levy of Tax, however, taking into consideration two reasons that the appellant therein was a public sector

undertaking, in a priority sector, and the demand was, Rs.1.34 Crores approximately, the Hon'ble Supreme Court held that, to call upon BPCL to deposit a huge amount of Rs.1.34 Crores approximately, would have a serious effect on the PDS Sales, and the Court was satisfied that BPCL is a substantial company, and it is in a sound financial position, and it can discharge its liability at a later date, if need be. The Hon'ble Supreme Court also proceeded to record an undertaking from the appellant/Corporation that, in the event of the Department succeeds in the Appeal, pending before the Assistant Commissioner of Sales Tax, the appellant will pay the tax due with interest in accordance with Orissa Sales Tax Act.

8. The decision rendered in the above referred BPCL case, could be squarely made applicable to the instance cases as well. The only difference, which could be pointed out at this stage, is the nature of transaction, which is the subject matter of dispute. However, this will not, in any manner, alter the decision, since the petitioners herein are also a public sector Company/ Corporation.

9. The details as to what is the amount of tax and penalty demanded from the petitioner; 25 % of the disputed tax paid by the petitioner as pre deposit; now, the amount sought to be demanded from the petitioner, excluding the mandatory deposit of 25%, are set out in the form of a tabulated columns below under the captions 'A' 'B' and 'C', which includes CPCL as well:-

'A'

INDIAN OIL CORPORATION LIMITED

Sl. No.	W.P.Nos.	Assessment years	Tax demanded	Penalty
1	3141/2016	2006-2007	Rs.5,67,24,839.00	Rs.1,71,65,739.00
2	3142/2016	2007-2008	Rs.37,63,19,432.00	Rs.6,64,50,948.00
3	3143/2016	2008-2009	Rs.19,07,64,002.00	Rs.9,53,82,003.00
4	6294/2016	2009-2010	Rs.17,96,97,776.00	Rs.89,84,389.00
5	6295/2016	2010-2011	Rs.57,63,43,260/-	Rs.2,88,17,163.00
6	6296/2016	2011-2012	Rs.28,50,03,555	Rs.1,42,50,178.00

CHENNAI PETROLEUM CORPORATION

Sl. No.	W.P.No.	Assessment years	Tax demanded	Penalty
1	8015/2016	2010-11	Rs.104,89,09,254 .00	Rs.157,34,11,111 .0

'B'

Sl.No.	W.P.No.	Assessment years	25% Pre-Deposited Amount
1	3141/2016	2006-2007	Rs.1,41,81,122.00
2	3142/2016	2007-2008	Rs.9,40,79,858 .00
3	3143/2016	2008-2009	Rs.4,76,91,001.00
4	6294/2016	2009-2010	Rs.4,49,21,944.00
5	6295/2016	2010-2011	Rs.14,40,85,815.00
6	6296/2016	2011-2012	Rs.7,12,50,889.00

CHENNAI PETROLEUM CORPORATION

Sl. No.	W.P.No.	Assessment years	25% Pre-Deposited Amount
1	8015/2016	2010-11	Rs.26,22,30,000.00

'C'

Sl.Nos	W.P.Nos	Assessment years	25% Demanded Tax
1	3141/2016	2006-2007	Rs.1,41,81,122/-
2	3142/2016	2007-2008	Rs.9,40,79,858/-
3	3143/2016	2008-2009	Rs.4,76,91,000/-
4	6294/2016	2009-2010	Rs.4,49,21,944/-
5	6295/2016	2010-2011	Rs.14,40,85,817/-
6	6296/2016	2011-2012	Rs.7,12,50,888/-

CHENNAI PETROLEUM CORPORATION

Sl.No.	W.P.No.	Assessment Year	25% Demanded Tax
1	8015/2016	2010-2011	Rs.26,23,14,606/-

10. As pointed out by the Hon'ble Supreme Court, it would be inequitable to call upon the public sector company to pre deposit this amount, as it may have other repercussion on the wellbeing of the Company, that too, at this stage, when the

Appeal Petitions are pending before the Appellate Authority. That apart, when the Writ Petitions were entertained, interim order was passed on 01.02.2016, directing the respondents not initiate any recovery proceedings against the petitioner. The Appellate Authority understood the scope of the order, and called upon the petitioner to argue the Appeals.

11. It is submitted by the learned counsel appearing for the petitioner that the Appeals have been argued, and only issue was as to whether particular documents could have been rejected on account that counter signature has not be done by the Port Authorities, which defect, according to the petitioner, has been rectified and the matter is before the Appellate Authority for consideration. It is further submitted that arguments are over, and orders are likely to be passed in the Appeal Petitions any time.

12. Be that as it may, the reasons given by this Court in the preceding paras, are sufficient to hold that the impugned orders require modification. Accordingly, the Writ Petitions filed by petitioners are partly allowed, and the first condition, requiring the petitioners to pay 25% of the disputed tax in each of the cases are set aside, and the second condition, requiring the petitioners to furnish bank stands modified and the petitioners are hereby, directed to furnish personal bond for the entire disputed tax before the Assessing Officer. It is made clear that this order is passed considering the peculiar facts and circumstances of the case, and not be treated as precedent. The Appellate Authority is requested to conclude the proceedings at the earliest, and pass a speaking order.

13. Since the learned counsel for the petitioner, in course of arguments, has brought to the notice of this Court that, in the event, the appellant fails in the Appeal, obviously, they have to comply with other conditions while questioning the correctness of the order before the appellate forum i.e., Tribunal. Hence, this Court is inclined to adopt the same observation, as made by the Hon'ble Supreme Court in the above referred case. Accordingly, the petitioners herein, being public sector companies, and as of now are substantial Companies in a sound financial position, it can discharge its liability at a later date, if need be. With the above observation and direction, the Writ Petitions are partly allowed, as indicated above.

14. In the result, all the Writ Petitions are partly allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(VI)

//True Copy//

Sub Assistant Registrar

sd

To

1 The Deputy Commissioner (CT)-IV (FAC)
Large Taxpayers Unit,
No.34, Dugar Towers, Fifth Floor,
Marshalls Road,
Egmore, Chennai - 600 008.

2 The Joint Commissioner (CT) (Appeals)
CT Annexe Building, III Floor,
Greams Road, Chennai - 600006.

+ 2 ccs to M/s. N. Inbarajan, Advocate SR.29673

+ 1 cc to Special Government Pleader Sr.29939

W.P.Nos.3141 to 3143, 6294 to 6296 and 8015 of 2016 (7 cases)

AD(CO)
Eu 30.06.16