IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.35195 of 2016

Southern Petrochemical Industries Corporation Limited
(Represented by its Deputy Manager (Finance))
S.Saravanan,
No.88, SPIC House,
Mount Road, Guindy, Chennai - 600 032. ...Petitioner

vs.

1. The Assistant Commissioner (CT) (FAC)
Allandur Assessment Circle,
12, Vedagiri Street,
Alandur, Chennai-600 016.

2. The Appellate Deputy Commissioner (CT)
Chennai (East) Division,
C.T.Building Annexe, Third Floor,
Greams Road, Chennai-600 006. ...Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Mandamus or any other appropriate writ, order or direction directing the Second Respondent herein to admit the appeal filed by the Petitioner against the assessment order of the First Respondent in TIN: 33656220441/2011-12 dated 31.03.2016 and filed on 06.05.2016.

For Petitioner : Mr.N.Prasad

For Respondents : Mr.K.Venkatesh
Government Advocate

ORDER

Heard Mr.N.Prasad, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents who is assisted by

Mrs.A.Jeyashanthi, Assistant Commissioner (CT), Alandur Assessment Circle. By consent, the writ petition is taken up for final disposal.

2.In this writ petition, the petitioner who is a registered dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act (TNVAT) and the Central Sales Tax Act (CST) has sought for a direction upon the 2nd respondent to admit the appeal filed by the petitioner.

3.The petitioner has sought for such an innocuous relief for the reason that in spite of the said assessment order for the year 2011-2012, the assessing officer has passed two orders, one order dated 31.03.2016, by which the Assessing Officer held that the petitioner is not eligible for the input tax credit and revised the entire credit availed by the petitioner. Subsequently by a separate order dated 15.07.2016, the first respondent has passed an order demanding tax and penalty. As against the order dated 15.07.2016, appeal has been filed in A.P.No.147 of 2016 and the same has been admitted by the second respondent and stay petition is numbered as S.P.No.119 of 2016. When the petitioner wanted to prosecute his appeal as against the order dated 31.03.2016, the second respondent insisted upon the payment of 25% of the disputed tax which already stood remitted while filing the appeal as against the order dated 15.07.2016. Thus, if the petitioner is required to effect further payment of 25% of the disputed tax, it would amount to double payment in respect of same assessment year. When this issued was put to Mrs.A.Jeyashanthi, Assistant Commissioner (CT), Alandur Assessment Circle, who is present before this Court, she readily agreed to pass a consolidated order and serve the same on the petitioner within a period of one week from the date of receipt of a copy of this order. If the said consolidated order is passed, then the technical difficult which the petitioner has now expressed would stand absolved. Nevertheless, the petitioner is entitled to canvas the correctness of the reasons set out in the order dated 31.03.2016 which should stand incorporated in the consolidated order.

4.Accordingly, on receipt of the consolidated order, the petitioner shall file additional grounds and challenge the same in the appeal pending as A.P.No.147 of 2016 which shall be entertained by the second respondent and a decision to be taken as regards the correctness of the consolidated order passed by the Assessing Officer. Since the stay petition is also pending before the Authority and the petitioner has effected pre-deposit of 25% of the disputed tax, there will be a further direction to the petitioner to pay another 15% of the disputed tax within a period of two weeks from the date of receipt of a copy of the consolidated order. Then the order of assessment i.e. the consolidated order as well as the assessment order dated 15.07.2016 for assessment year 2011-2012 under the Tamil Nadu Value Added Tax Act shall remain stayed till the disposal of the appeal in A.P.147 of 2016. Till the 15% payment is affected the attachment of the petitioner's bank account will continue, but the Assessing Officer shall not effect any recovery and on payment of further 15% of the disputed tax, the attachment of the bank account/s shall stand lifted.

5.The Writ Petitions are disposed of with the above direction. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

kp/cse

To

1. The Assistant Commissioner (CT) (FAC)
Allandur Assessment Circle,
12, Vedagiri Street,
Alandur, Chennai-600 016.

2. The Appellate Deputy Commissioner (CT)
Chennai (East) Division,
C.T.Building Annexe, Third Floor,
Greams Road, Chennai-600 006.

1 CC to Mr. M/s.N.Inbarajan, Advocate, SR. 57768

W.P.No.35195 of 2016

GR (CO)
PSI 07/10/2016