In the High Court of Judicature at Madras

Dated : 05.10.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.35252 of 2016 & WMP.No.30368 of 2016

M/s.HIL Limited (Formerly Hyderabad Industries Ltd.), rep.by its General Manager - Operations and Authorized Signatory Mr.C.Gangadharan ...Petitioner

Vs

1.The Appellate Deputy Commissioner (CT) (North), Chennai.

2.The Assistant Commissioner (CT), Madhavaram Assessment Circle, No.170, GNT Road, Puzhal Camp, Chennai-66. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in S.P.No.85/2016 in APV No.139/2016, quash the impugned order dated 12.9.2016 and further direct the first respondent to grant an absolute stay of collection of the balance of disputed tax and for the entire disputed penalty in respect of the assessment year TIN 2011-2012 without imposing any further condition of furnishing of security in the form of immovable property or bank guarantee pending disposal of the appeal on his files.

For Petitioner : Mr.P.Rajkumar
For Respondents : Mr.K.Venkatesh, GA

ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. In this writ petition, the petitioner challenges an order passed by the first respondent in a stay petition in the pending appeal, filed by the petitioner as against the order of assessment passed by the second respondent under the provisions

of the Tamil Nadu Value Added Tax Act, 2006 for the year 2011-12 dated 18.1.2016.

3. As per the order of assessment, the total tax payable by the petitioner is Rs.1,97,99,199/-. The petitioner, at the time of filing the appeal before the first respondent, made a pre-deposit of 25% of the disputed tax, which is around Rs.49,50,000/-. When the petitioner's application for stay came up for consideration, the first respondent directed the petitioner to make payment of another sum of Rs.49,49,800/- and directed to furnish bank guarantee to the satisfaction of the Assessing Officer for the balance tax and entire penalty to the tune of Rs.2,44,98,980/-.

4. The contention raised by the petitioner is that in the order of assessment, an equal addition has been made towards probable omission. This, according to the learned counsel, is contrary to the settled legal principles as laid down by the Hon'ble Division Bench of this Court in the cases of

(i) State of Tamil Nadu Vs. Commercial Cloth Manufacturers [reported in (2010) 28 VST 199];
(ii) State of Tamil Nadu Vs. Sri Vinayaga Agencies [reported in (2010) 27 VST 358];
(iii) Sri Ramu Furniture Company Vs. State of Tamil Nadu [reported in (2013) 57 VST 383] and
(iv) Jayalakshmi Oil Mills Vs. State of Tamil Nadu [reported in (2013) 58 VST 535].

5. Therefore, it is submitted that for the sake of argument, if this equal time addition is deleted, then the petitioner has already paid 50% of the disputed tax and directing them to pay another sum of Rs.49,49,800/- would amount to paying 100% of the tax demanded.

6. The argument of the learned counsel for the petitioner show that there is a prima facie case, since reliance is placed on the decisions of the Hon'ble Division Benches of this Court. Therefore, this Court is of the view that the payment of Rs.49,50,000/- made by the petitioner at the time of entertaining the appeal i.e. pre-deposit would be sufficient to safeguard the interests of the Revenue and for the remaining amount, the petitioner can be directed to execute a personal bond.

7. Accordingly, the writ petition is disposed of with a direction to the petitioner to execute a personal bond for the balance of disputed tax and entire penalty. The petitioner is further directed to keep the personal bond alive till the disposal of the appeal by the first respondent. No costs. Consequently, the above WMP is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
1.The Appellate Deputy Commissioner (CT) (North), Chennai.

2.The Assistant Commissioner (CT),
Madhavaram Assessment Circle,
No.170, GNT Road, Puzhal Camp,
Chennai-66.

+1 cc to Special Government Pleader(Taxes) sr 57411
+1 cc to M/s.P.Rajkumar & C.Sivasubramanian Advocate sr 57406

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