IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.36062 and 36063 of 2016
and W.M.P.Nos.30985 to 30987 of 2016

M/s Dell International Services India Pvt. Ltd.,
(Formerly known as 'Dell India Private Limited'),
Rep.by its Tax Manager, Mr.Narendra B.B.
M-4, SIPCOT, Sriperumbudur,
Chennai 602 106. ...Petitioner in both WPs

/vs/

1.The Joint Commissioner (CT) Appeals,
CT Annexe Building, 3rd Floor,
Greams Road, Chennai 600 006.

2.The Deputy Commissioner (CT)-1,
Large Tax Payer Unit, No.34,
Marshalls Road, Egmore,
Chennai 600 008. ...Respondents in both WPs

Prayer in W.P.No.36062 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order, dated 23.09.2016, passed by the 1st respondent in S.P.No.78/15 in A.P.No.95/15 (Extension), quash the same and further direct the 1st respondent to extend the stay granted, vide order dated 03.11.2015 in S.P.No.78/15 till the disposal of the appeal in A.P.No.95 of 2015.

Prayer in W.P.No.36063 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records pertaining to the impugned notice dated 06.10.2016 issued by the 2nd respondent, quash the same and further direct the 2nd respondent to forbear from realizing the bank guarantees executed by the petitioner for an amount of Rs.8,00,96,894/- till the disposal of the appeal in A.P.No.95 of 2015 pending before the 1st respondent.

For Petitioner in both W.Ps : Mr.Hari Radhakrishnan

For Respondents in both W.Ps : Mr.S.Kanmani Annamalai A.G.P.,

COMMON ORDER

Heard Mr.Hari Radhakrishnan, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, who accepts notice on behalf of the respondents, in both these writ petitions. With the consent of the learned counsel appearing on either side, the Writ Petitions are taken up for final disposal.

2. W.P.No.36062 of 2016 has been filed by the petitioner, challenging the order passed by the first respondent in a stay petition in an appeal filed by the petitioner as against the assessment order under the Central Sales Tax Act, 1956 and W.P.No.36063 of 2016 has been filed challenging the consequential notice of recovery, dated 06.10.2016.

3. Admittedly, the petitioner-Company has paid 50% of the disputed tax and the remaining has been fully secured by way of bank guarantee(s). The first respondent was satisfied that the interest of Revenue has been protected and granted stay. Unfortunately, while granting stay, the first respondent stated that it shall be for a period of six months or till the disposal of the appeal, whichever is earlier. This expression 'whichever is earlier' has caused the problem.

4. Admittedly, the first respondent does not allege that the petitioner is guilty of dragging the matter. Therefore, in all fairness, the first respondent should have granted stay till the disposal of the appeal. If for any reason, the first respondent cannot dispose of the appeal, the dealer cannot be put to peril. The impugned order, stating that the petition for extension of interim oder is not maintainable, is a wrong finding. In fact, even before this Court, both the Revenue as well as the assessee have filed petitions for extension of interim order and it has been entertained.

5. In the light of the above, the impugned order, dated 23.09.2016, passed by the first respondent, which is challenged in W.P.No.36062 of 2016, is held to be unsustainable. Accordingly, W.P.No.36062 of 2016 is allowed and the impugned order is set-aside and it is ordered that there will be an order of stay of the assessment passed by the second respondent, dated 20.08.2015 in respect of the assessment under the Central Sales

Tax Act, 1956, for the year 2013-2014, till the appeal in A.P.No.95/15 (Extension) is heard and disposed of, by the first respondent. This order is passed taking note of the fact that the petitioner has paid 50% of the disputed tax and furnish bank guarantee, for the remaining amount. Consequently, the impuned notice of recovery, dated 06.10.2016, is also quashed and W.P.No.36063 of 2016 stands allowed. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

srk/ari

To

1.The Joint Commissioner (CT) Appeals,
CT Annexe Building, 3rd Floor,
Greams Road, Chennai 600 006.

2.The Deputy Commissioner (CT)-1,
Large Tax Payer Unit, No.34,
Marshalls Road, Egmore,
Chennai 600 008.

1 cc to M/s.Hari Radhakrishnan, Advocate, sr.57979
1 cc to Special Government Pleader (T), sr.58145

W.P.Nos.36062 and 36063 of 2016
& W.M.P.Nos.30985 to 30987 of 2016

kra 07.10.2016