IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.36269 of 2016

1 M/s.Sun Pharmaceutical Industries Ltd
Rep by S.Sridharan
Authorised Signatory
Part D, S.No.636, 637, 728 to 745
Dadha Nagar, Pozhichalur
Pallavaram, Chennai-74
... Petitioner

Vs.

1 The Appellate Deputy Commissioner (CT)
Chennai East, C.T.Building annexe
3rd floor, Greams Road
Chennai-6

2 The Assistant Commissioner (CT)
Pammal Assessment Circle
Chennai ... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus calling for the records on the files of the 1st respondent in S.P. 110/ 2016 in APC. 48/2016 dated 9.9.16 and quash the same as being invalid and illegal in so far the order directs the petitioner to pay another 25% of the disputed tax and further direct and permit the petitioner to file bank guarantee for the entire balance of tax amounts.

For Petitioner : Mr.C.Venkatraman

For Respondents : Mr.S.Kanmani Annamalai
Spl. Govt. Pleader.

ORDER

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner has come up with the present writ petition, challenging the order of the first respondent made in S.P. 110/ 2016 in APC. 48/2016 dated 9.9.2016 as invalid and illegal in so far the order directs the petitioner to pay another 25% of the disputed tax and consequently, to permit the petitioner to file bank guarantee for the entire balance of tax amount.

3. It is the case of the petitioner that the petitioner is the manufacturer and dealer in medicines. The petitioner had reported a total and taxable turnover of Rs.163,14,39,012/- and Rs.58,92,27,068/- respectively in the returns filed under the Central Sales Tax Act for the year 2014-15 and they have been assessed on a total and taxable turnover of Rs.163,14,39,012/- and Rs.58,93,40,951/- respectively by the second respondent as per proceedings dated 15.4.2016. In the said order, the second respondent disallowed the concessional rate of tax of 2% on turnover of Rs.24,13,04,100/- on the ground of absence of declaration forms and instead levied tax at 5%. After receipt of the assessment order, the petitioner had submitted 31 original C form declarations to the second respondent to the value of Rs.3,77,98,047/- and requested the second respondent to accept the declaration forms and pass revised order. However, the second respondent refused to accept the declaration forms on the ground of absence of power to accept declaration forms and pass revised orders. Hence, the petitioner filed an appeal to the first respondent after payment of Rs.27,63,445/- with a delay of 27 days in filing the appeal. An affidavit and petition for stay were also filed praying stay of payment of balance tax of Rs.59,41,318/-. The delay in filling the appeal was condoned on 16.8.2016 and the appeal was admitted and numbered as APC.48/2016. The stay petition was posted for hearing on 9.9.2016. In S.P.No.110 of 2016, the first respondent directed the petitioner to pay a sum of Rs.21,76,181/- on or before 8.10.2016 and to file bank guarantee for the balance tax of Rs.43,52,381/-. However, the first respondent ignored the fact that the petitioner had applied for stay for payment of balance of tax of Rs.59,41,318/- only and not for Rs.65,28,572/-. Hence, challenging the same, the petitioner has come up with the present writ petition.

4. Today, when the matter was taken up for consideration, learned counsel appearing for the petitioner submitted that the petitioner has already paid 25% of the disputed tax along with appeal papers. Now, the petitioner is prepared to give bank guarantee for the entire 75% of the disputed tax. Learned Special Government Pleader appearing for the respondents has also agreed for the same.

5. In view of the same, the impugned order of the first respondent dated 9.9.2016 made in S.P.110/ 2016 in APC. 48/2016

is quashed and the writ petition is allowed. The petitioner is permitted to furnish bank guarantee for the entire 75% of the disputed tax within a period of four weeks from the date of receipt of a copy of this order and on furnishing such bank guarantee, the stay granted by the first respondent shall be in force till the disposal of the appeal. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

sbi

To

1 The Appellate Deputy Commissioner (CT)
Chennai East, C.T.Building annexe
3rd floor, Greams Road
Chennai-6

2 The Assistant Commissioner (CT)
Pammal Assessment Circle
Chennai

1 cc to Mr.C. Venkatraman, Advocate, Sr. 58520
2 ccs to Spl.Government Pleader (Taxes), Sr. 58625, 58930

W.P.No.36269 of 2016

NM (CO)
kk 24/11