In the High Court of Judicature at Madras

Dated : 30.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.41982 of 2016 & WMP.No.35930 of 2016

M/s.3M India Ltd., rep.by its
Manager - Indirect Tax
D.K.Suresh ...Petitioner

Vs

1.The Assistant Commissioner (CT),
T.Nagar Assessment Circle,
Chennai-28.

2.The Appellate Deputy Commissioner
(CT), Chennai Central, Chennai-6. ...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 TIN : 33961561021/2013-14, quash the proceedings dated 15.11.2016 issued therein and further direct the 1st respondent not to take any coercive measures for recovery of disputed taxes and penalty from the petitioner till the disposal of appeals in A.P.V.Nos.334 to 340 of 2015 by the 2nd respondent.

For Petitioner : Mrs.Hema Muralikrishnan
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. The petitioner is a registered dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. In this writ petition, the petitioner challenges a notice issued by the first respondent calling upon the petitioner to pay tax and penalty as quantified in the assessment orders for the years from 2007-08 to 2013-14.

3. As against the orders of assessment, the petitioner preferred appeals before the second respondent in A.P.V.Nos.334 to 340 of 2015. Along with the appeals, the petitioner filed stay petitions in S.P.Nos.268 to 274 of 2015 and the second respondent - Appellate Authority, by order dated 19.8.2015, while directing the petitioner to pay another 25% of the disputed tax, over and above the 25% of the disputed tax paid as a mandatory pre-deposit at the time of filing the appeals, directed the petitioner to furnish bank guarantee for the balance of tax and penalty. On complying with the above condition, the second respondent granted stay of the collection of the balance amount till the disposal of the appeals or till 18.2.2016, whichever is earlier. The petitioner also furnished bank guarantee as directed.

4. However, the appeals have not been disposed of by the second respondent on or before 18.2.2016. The petitioner also filed petitions on 16.2.2016 for extension of stay. The petitions for extension of time are also still pending before the second respondent. The Departmental Representative also filed their written arguments before the second respondent on 7.3.2016 and reply arguments have also been filed on 10.3.2016.

5. Taking note of the fact that the stay was restricted till 18.2.2016, the Assessing Officer issued the impugned notice. It is seen that in the impugned notice, the Assessing Officer has not taken into consideration the further payment made by the petitioner as directed in the order dated 19.8.2015. The petitioner also paid 50% of the disputed tax and furnished bank guarantee for the remaining 50% of the disputed tax and full penalty. The impugned demand cannot be raised at this stage for the reason that the pendency of the appeals is not at the instance of the petitioner, but on account of the fact that several appeals are pending before the second respondent. Therefore, the impugned demand cannot be sustained at this juncture and is liable to be set aside.

6. Hence, the writ petition is allowed, the impugned order is set aside and the demand of balance of tax and entire penalty shall remain stayed till the disposal of the appeals before the second respondent in APV.Nos.334 to 340 of 2015. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rs

To

1.The Assistant Commissioner (CT), T.Nagar Assessment Circle, Chennai-28.

2.The Appellate Deputy Commissioner (CT), Chennai Central, Chennai-6.

+1cc to Spl.Govt.Pleader(Taxes), Advocate, S.R.No.70620
+1cc to Mr.L.Muralikrishnan, Advocate, S.R.No.70661

WP.No.41982 of 2016&
WMP.No.35930 of 2016

LRS(CO)

MA(27/12/2016)