IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.12.2016

CORAM

THE HONOURABLE Mr.JUSTICE RAJIV SHAKDHER

W.P.No.43117 of 2016
and W.M.P.Nos.36946 to 36948 of 2016

M/s.Dell International Services India Pvt. Ltd.,
[Formerly known as Dell India Private Limited]
Rep. by its Tax Manager,
Narendra BB,
M-4 SIPCOT, Sriperumbudur,
Chennai-106. ... Petitioner

Vs

1.The Joint Commissioner [CT] Appeals,
CT Annexure Building, 3rd Floor,
Greams Road, Chennai-6.

2.The Deputy Commissioner [CT]-1,
Large Tax Payer Unit, No.34,
Marshalls Road, Egmore,
Chennai-8. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus and call for the records pertaining to the impugned notice dated 02.12.2016 issued by the 2nd respondent and quash the same and further forbear the 2nd respondent from initiating any coercive recovery action till the disposal of the petition for extension of stay order before the 1st respondent.

For Petitioner : Mr.G.Derrick Sam

For Respondents : Mr.S.Kanmani Annamalai,
Additional Government Pleader

O R D E R

1. Issue notice. Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepts notice on behalf of the respondents.

2. With consent of counsel for parties, the writ petition is taken up for final disposal.

3. The petitioner has moved this Court, to seek a writ order or direction qua the 2nd respondent to, the effect, that he should forbear from initiating any coercive recovery action, till the disposal of the petition, for extension of stay; which is pending adjudication, before the 1st respondent.

4. In support of the stand taken by the petitioner, Mr.G.Derrick Sam, has brought to my notice, the order, dated 03.06.2016, passed by the Joint Commissioner, Commercial Tax [Appeals]. The operative portion of the direction, based on which, stay was granted, is set out in paragraph No.5 of the said order.

5. For the sake of convenience, the same is extracted hereafter.

> "... 5. In view of the above position, the petitioner's claim of issuing an absolute stay order is not feasible. However, considering the facts and circumstances of the case and the capacity of the petitioners to pay the arrears the petitioners are directed,
>
> i) To pay 25% of the disputed tax of Rs.225339022/- which arrived to Rs.56334755/- on or before 02.07.2016.
>
> ii) To furnish sufficient Bank Guarantee to the satisfaction of the Assessing Officer for the balance of Tax in full of Rs.112669513/- in the prescribed manner in fulfillment of the conditions stipulated in Rule 14(15) read with the proviso to Section 52(4) of the Tamil Nadu Value Added Tax Act, 2006 on or before 02.07.2016.
>
> iii) The Stay is for 6 months or till the disposal of the appeal whichever is earlier."
>
> [emphasis is mine]

6. The petitioner avers that, the conditions of stay have been complied with. It is sated, that not only 25% of the disputed tax stands paid but also a Bank Guarantee, in the sum of Rs.11,26,69,513/- has been furnished to the Department.

7. Counsel for the petitioner says that the Bank Guarantee furnished expires on 14.06.2017.

8. The petitioner is aggrieved by the impugned order, dated 02.12.2016, whereby, it has been called upon to deposit the balance tax, which is equivalent to the value of the Bank Guarantee, within one day of the receipt of the said notice.

The impugned notice also states, the recovery of balance tax would be made as per the provisions of the Act.

9. It is the common case of the parties, a fact which is also apparent from the impugned notice, dated 02.12.2016, that the appeal filed by the petitioner has not been disposed of as yet.

10. I am also informed by the counsel for the parties that the petitioner's application for extension of stay is pending adjudication.

10.1. In these circumstances, the Writ Petition is disposed of, with a direction that the 2nd respondent will not initiate any coercive action, against the petitioner, till the disposal of the petition, for grant of extension of stay, subject, though, to the condition that the Bank Guarantee in issue is kept alive, during the pendency of the appeal.

11. Needles to say, the 2nd respondent will accord personal hearing to the petitioner, before passing any order on the petition for extension of stay. No costs. Connected Miscellaneous Petitions accordingly closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Joint Commissioner [CT] Appeals,
CT Annexure Building, 3rd Floor,
Greams Road, Chennai-6.

2.The Deputy Commissioner [CT]-1,
Large Tax Payer Unit, No.34,
Marshalls Road, Egmore,
Chennai-8.

+1cc to M/S.hari Radhakrishnan, Advocate Sr.72506
+1cc to the Special Government Pleader Sr.72685

W.P.No.43117 of 2016
and
W.M.P.Nos.36946 to 36948 of 2016

mp1[co]
srg 09/12/2016