IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.39367 & 39368 of 2004

Alstom Projects India Ltd.,
Pollachi Main Road,
Eachanary Post,
Coimbatore-641 021 .. Petitioner in both the W.Ps

Vs.

1.The Deputy Commercial Tax Officer,
(Enforcement),
Roving Squad-I,
Coimbatore.

2.The Commercial Tax Officer,
Podanur Range,
Coimbatore .. Respondents in both the W.Ps.

Prayer in W.P.No.39367 of 2004: Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari calling for the records on the files of the first respondent in G.D.R.177/04-05 dated 24.12.2004 and quash the proceedings of
O.R.No.449/04-05
the first respondent.

Prayer in W.P.No.39368 of 2004: Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari calling for the records on the files of the first respondent in Form No.57 in G.D.R.177/04-05 (compounding Notice) dated
O.R.No.449/04-05
24.12.2004 and quash the proceedings of the first respondent.

For Petitioner : Mr.N.Inbarajan
For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

COMMON ORDER

Heard Mr.N.Inbarajan, the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, the learned Additional Government Pleader, for the respondents.

2. In both these writ petitions, the petitioner has challenged the compounding notices and the order passed by the first respondent directing payment of compounding fee, by rejecting the contention raised by the petitioner.

3. Though the learned counsel for the petitioner raised various factual contentions challenging the impugned orders, when this Court pointed out that there is an effective alternate remedy available under Section 33 of the Tamil Nadu General Sales Tax Act, 1956 (TNGST Act in short) by way of revision and that the petitioner can avail such a remedy, the learned counsel for the petitioner submitted that the petitioner is ready to avail the alternate remedy, but the only problem is that the revisional authority may insists upon payment of the entire compounding fee, as demanded by the first respondent.

4. On a perusal of Section 33 of the TNGST Act, it is evidently clear that there is no pre-deposit contemplated for entertaining the revision petition. Therefore, the petitioner need not have any apprehension that the revisional authority will direct them to pay the entire compounding fee as pre-condition for entertaining the revision petition.

5. In spite of such an observation, still the learned counsel for the petitioner states that the petitioner has apprehension because in another order passed by the revisional authority, namely, the Deputy Commissioner (CT), Coimbatore, in M.P.No.3 of 2003, dated 27.11.2003, in respect of M/s.Coramandel Petroleum Private Limited, Cochin, direction was issued by the revisional authority to pay the entire compounding fee as condition precedent for admitting the revision petition. A copy of the said order dated 27.11.2003 has been appended in the typed set of papers.

6. On a perusal of the said order, it is seen that there is no statutory provision which has been referred to by the revisional authority for making a dealer to pay the entire compounding fee as a condition precedent to admit the revision petition. Therefore, no pre-deposit can be insisted upon for admitting the revision petition. After admitting the revision petition, if any other steps are taken for any recovery etc., and if the petitioner moves for interim relief, then it will be open to the revisional authority to pass appropriate conditional orders. However, if there is no statutory power for the

revisional authority to insist upon a pre-deposit as condition precedent, for admitting the revision petition, insistence of payment of the entire compounding fee has to be held to be without jurisdiction.

7. In the light of the above, the writ petitions stand disposed of by directing the petitioner to file revision petitions before the revisional authority as against the impugned orders and if the same are filed within 30 days from the date of receipt of a copy of this order, the revisional authority shall not insist upon payment of any pre-deposit for admitting the revision petitions. Since the proceedings is of the year 2004 and for all these years there has been an order of interim stay, the petitioner is directed to furnish personal bonds to the satisfaction of the revisional authority securing the amounts and if personal bonds are furnished then without insisting for any payment, the revisional authority shall consider the revision petitions and pass appropriate orders on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

msk
To

1.The Deputy Commercial Tax Officer,
(Enforcement),
Roving Squad-I,
Coimbatore.

2.The Commercial Tax Officer,
Podanur Range,
Coimbatore

+1 CC to Mr. N. Inbarajan , Advocate Sr.No.52105
+2 CC to Spl. Government Pleader (Taxes) Sr.No.52398 & 52049

W.P.Nos.39367 and 39368 of 2004

NRJK (CO)
MD : 23/09/2016