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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)Nos.14136 and 14137 of 2016
and
W.M.P.(MD).No.10504 of 2016

Nagarjuna Fertilizers and
Chemicals Ltd,
rep.by its Accounts Officer
N.Balasubramanian,
No.3,Vivekanandha Nagar,
Ramalinga Nagar Extn.,
Woraiyur,
Tiruchirapalli. ... Petitioner in both WPs

Vs

1.The Assistant Commissioner (CT),
Woraiyur Assessment Circle,
Tiruchirappalli.

2.The Appellate Deputy Commissioner (CT),
Tiruchy.

3.The Sales Tax Appellate Tribunal (AB),
Commercial Taxes Buildings,
Dr.S.V.K.S.Thangaraj Salia,
Madurai-625 020.
... Respondents in both WPs

W.P.(MD).No.14136 of 2016: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent herein in TIN 33853445549/2010-11 dated 01.08.2016 quashing the same, while directing the 1st respondent to forbear from proceeding with recovery pursuant to the impugned notice in TIN 33853445549/2010-11 dated 01.08.2016.

W.P.(MD).No.14137 of 2016: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus directing the Third Respondent herein to dispose the stay application filed by the petitioners in M.T.P.No.01/2016 arising out of M.T.A. No.19/2016.

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For petitioner : Mr.K.A.Parthasarathi for M/s.Inbarajan

For respondents : Mr.R.Karthikeyan Additional Government Pleader

COMMON ORDER

Since the issue involved in both the Writ Petitions is one and the same, they are taken up together and disposed of, by this common order.

2. The case of the petitioner is that it is a Public Limited Company incorporated under the Companies Act. The assessment done by the first respondent in respect of the petitioner-Company for the year 2010-2011 and 2014-2015 on 06.11.2015 and 20.11.2015, respectively, resulted in excess payment of Rs.50,00,000/- by the petitioner-Company. Therefore, as against the assessment order, dated 06.11.2015, the petitioner-Company filed a First Appeal before the second respondent, who is the first appellate authority, under Section 51 of the Tamil Nadu Value Added Tax Act,2006 (in short 'the Act') and the same was dismissed. Thereafter, the petitioner filed a Second Appeal under Section 58 of the Act before the third respondent-Tribunal. As a condition precedent for filing the appeal before the third respondent, the petitioner-Company deposited the entire tax component on 18.03.2016 and moved a stay application before the said authority. Presently, orders were reserved in the stay petition by the third respondent and the same was also intimated to the first respondent on 17.06.2016. While so, since the first respondent has initiated proceedings under the Revenue Recovery Act, the petitioner has come forward with W.P.(MD).No.14136 of 2016 to quash the order passed by the first respondent dated 01.08.2016. The petitioner-Company preferred W.P.(MD).No.14137 of 2016 to dispose of the stay application pending before the third respondent.

3. Learned counsel for the petitioner-Company submitted that when the stay application is pending before the third respondent and the same was also intimated to the first respondent on 17.06.2016, the said authority should not have initiated the proceedings under the Revenue Recovery Act to attach the properties of the petitioner-Company. Such action of the respondents is violative of Article 14 of the Constitution of India. According to him, the orders impugned in both the Writ Petition is liable to be set aside on the short ground that till the stay application pending against the third respondent is decided, the first respondent should refrain from resorting to any action against the petitioner-Company.

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4. The learned Additional Government Pleader was put on notice for the respondents.

5. It is seen that the third respondent has already reserved orders on the subject matter after hearing the parties concerned. Admittedly, no order has been passed by the third respondent in one way or the other. The petitioner has filed the other Writ Petition in W.P.(MD).No.14137 of 2016 for a direction to dispose of the stay application pending before the third respondent. When that being the factual position, in order to meet the ends of justice, the third respondent is directed to dispose of the appeal / stay petition preferred by the petitioner-Company, as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order, whereupon, the first respondent may proceed further depending upon outcome of the Appeal / stay application and pass appropriate orders, on merits and in accordance with law, within a period of four weeks from the date of receipt of the stay application to be decided by the third respondent. It goes without saying that till the stay application is decided by the third respondent, the first respondent shall not initiate any action against the petitioner-Company.

6. With the above directions, both the Writ Petitions are disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

/True copy/

Sub Assistant Registrar

To
1.The Assistant Commissioner (CT),
Woraiyur Assessment Circle,
Tiruchirappalli.

2.The Appellate Deputy Commissioner (CT),
Tiruchy.

3.The Sales Tax Appellate Tribunal (AB),
Commercial Taxes Buildings,
Dr.S.V.K.S.Thangaraj Salia,
Madurai-625 020.

+1cc to special Government Pleader SR.No.42621
+2cc to M/s.N.Inbarajan, Advocate SR.No.42374,42375

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