IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Tuesday, the Twenty Fourth day of October Two Thousand Seventeen

PRESENT

THE HON`BLE MR JUSTICE S. MANIKUMAR

AND

THE HON`BLE MR JUSTICE R. SURESH KUMAR

CMP No.18034 of 2017

IN WA.1295/2017

1 THE COMMISSIONER OF COMMERCIAL TAXES, GOVERNMENT OF TAMIL NADU, CHEPAUK, CHENNAI 600 005 [PETITIONERS]

2 THE JOINT COMMISSIONER, COMMERCIAL TAXES CT, LARGE TAX PAYERS UNIT, CHENNAI 600 008

3 THE DEPUTY COMMISSIONER, (COMMERCIAL TAXES CT-1), LARGE TAX PAYERS UNIT, CHENNAI 600 008

Vs

1 M/S.EMPEE DISTILLERIES LTD., REP. BY ITS CHAIRMAN, M.P.PURUSHOHAMAN, EMPEE TOWER, NO.59, HARRIS ROAD, PUDUPET, CHENNAI 600 002 [RESPONDENTS]

2 THE TAMIL NADU STATE MARKETING CORPORATION LTD., REP. BY ITS MANAGING DIRECTOR, (TASMAC) 4TH FLOOR, CMDA TOWER-II, GANDHI IRWIN BRIDGE ROAD, EGMORE, CHENNAI 600 008

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to stay the operation of the order dated 14/09/2017 in WP.No.24657/2017, on the file of the Honourable Court, (IN CMP No.18034 of 2017) pending disposal of the above WA.1295/2017.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MRS. NARMADA SAMPATH, Advocate for the petitioner the court made the following order:-

(Order of the Court was made by S.Manikumar,J)

U-Form Notice, dated 31/8/2017, for the month of July 2017, is extracted hereunder:-

> "Tvl. Empee Distilleries Ltd., is in arrears of tax of Rs.34,68,83,092.00 in respect of tax payable for the return month of July 2017 under TNVAT Act. The tax payable as per the return become due immediately on filing of return. But, till date the dealer has not made the payment and it has become a due. You are hereby requested to allow the Excise Duty requirement on account of Tvl. Empee Distilleries Ltd., and the balance due outstanding as on date shall be paid to this office towards sales tax due immediately.
>
> Hence, Garnishee order is issued herewith in Form U and you are requested to issue cheque in the name of the undersigned immediately."

2. Being aggrieved, M/s. Empee Distilleries/first respondent herein (petitioner therein) has filed a writ of certiorarified mandamus, to quash the order of the Deputy Commissioner (Commercial Taxes CT – I), Large Tax Payers Unit, Chennai/third petitioner (third respondent therein) in TIN No.33980640189/2017-18, dated 31/8/2017 and consequently, to direct the petitioners 1 to 3 herein (respondents 1 to 3 therein), to grant ten months time, to pay the VAT arrears and interest for the total of Rs.34,68,83,092/-.

3. After hearing the learned counsel for both parties and by observing that the writ petitioner is undergoing financial crisis, and taking note of the submission that the entire arrears of tax together with interest, would be paid in five equal instalments, writ Court, vide, order, dated 14/9/2017, ordered as hereunder:-

> "Accordingly, writ petition is disposed of directing the petitioner to pay the entire arrears of tax together with applicable interest in five equal monthly instalments. The first of such instalment shall be paid on or before 25/9/2017 and all the subsequent instalments shall be paid on 25th of every succeeding month. Subject to compliance of the above condition, the third respondent is directed to keep in abeyance the impugned Form U notice/garnishee order. If the petitioner fails to pay any one of the instalments within the stipulated by this Court, the impugned Form U Notice/garnishee order will stand automatically revived without any further reference to this Court. On the petitioner clearing the entire arrears along with interest

as per the time frame fixed by this Court, the third respondent shall lift the order of attachment/garnishee order.”

4. Being aggrieved, instant Writ Appeal No.1295 of 2017 has been filed, on the grounds inter alia that it is the practice of the first respondent herein to file such writ petitions and take orders for payment of tax on instalment basis, which statute does not permit and therefore, order of the writ Court requires interference.

5. Added further, Ms.Narmada Sampath, learned Special Government Pleader submitted that case of the first respondent is not bona fide and that for each and every month, the first respondent seeks to obtain orders from this Court for payment of tax on instalment basis and even for the month of August 2017, another writ petition, with a similar prayer has been filed.

6. On the above submissions and other grounds raised in the memorandum, learned Special Government Pleader seeks for an interim stay of the order made in W.P.No.24657 of 2017, dated 14/9/2017, so that, writ Court may not follow similar orders passed in the case of M/s. Empee Distilleries Ltd., Chennai.

7. Though the request of the learned Special Government Pleader appears to be reasonable that there should not be any repetition of granting orders, enabling payment of tax with interest on instalment basis, which according to the learned Special Government Pleader is not provided therefor under the statute, granting interim stay of the order made in the writ Petition No.24657 of 2017, dated 14/9/2017, would amount to restoring the garnishee order, in which event, the respondent would be made to pay the entire tax of Rs.34,68,83,092/- in one single instalment, which would result in disallowing the prayer sought for in the writ petition, or for that matter, allowing the instant appeal, without notice to the respondent. Time and again, the Hon'ble Supreme Court has held that in such circumstances, interim orders should not be granted.

8. In view of the above discussion, we are of the view that stay cannot be granted. Accordingly, this **Civil Miscellaneous Petition is dismissed.** However, it is made clear that appellants are at liberty to bring to the notice of the writ Court that challenge to the order made in W.P.No.24657 of 2017 has been entertained.

-sd/-
24/10/2017
/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE COMMISSIONER OF Q
COMMERCIAL TAXES GOVERNMENT OF TAMIL NADU
CHEPAUK, CHENNAI 600 005.

2 THE JOINT COMMISSIONER (CT)
LARGE TAX PAYERS UNIT, CHENNAI 600 008.

3 THE DEPUTY COMMISSIONER (CT) 1
LARGE TAX PAYERS UNIT, CHENNAI 600 008.

4 M/S.EMPEE DISTILLERIES LTD.,
REP. BY ITS CHAIRMAN, M.P.PURUSHOHAMAN,
EMPEE TOWER, NO.59, HARRIS ROAD, PUDUPET,
CHENNAI 600 002

5 THE TAMIL NADU STATE MARKETING
CORPORATION LTD., REP. BY ITS MANAGING
DIRECTOR, (TASMAC) 4TH FLOOR, CMDA TOWER-II,
GANDHI IRWIN BRIDGE ROAD, EGMORE, CHENNAI
600 008

6 THE BRANCH MANAGER
STATE BANK OF INDIA EGMORE HIGH ROAD BRANCH,
CHENNAI 600 008.

7 THE BRANCH MANAGER ANDHRA
BANK MOUNT ROAD, BRANCH, CHENNAI 600 002.

C.C. to SPL.GOVT.PLEADER-T Advocate on payment of necessary charges

The Government Advocate, High Court, Madras - 104.

Order

in
CMP.18034/2017

in
WA.1295/2017

Date :24/10/2017

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VC (27/10/2017)