IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2017

CORAM

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.No.26665 of 2017
and
W.M.P.No.28393 of 2017

Axis Bank Limtied
Rep. By Authorised Signatory,
... Petitioner

-Vs-

1. The Deputy Commissioner (ST) – IV
   Large Tax Payers Unit,
   Chennai 600 008

2. The Joint Commissioner (CT) Appeals
   3rd Floor, CT Building Annexe
   Greams Road, Chennai 600 006.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the notice of the 1st Respondent, in CST/875467/2015-16, dated 09.10.2017 and to quash the same.

For Petitioner	:	Mr.Adithya Reddy
For Respondents	:	Mr.K.Venkatesh Government Advocate

O R D E R

Heard Mr.Adithya Reddy, the learned counsel appearing for the petitioner, and Mr.K.Venkatesh, the learned Government Advocate, accepting notice on behalf of the respondents. With the consent of the learned counsel appearing on either side, this Writ Petition is taken up for disposal.

2. The petitioner is aggrieved by a notice issued by the first respondent, Assessing Officer of the petitioner, stating that, since there is no stay of recovery of arrears of sales tax payable by the petitioner, pursuant to the order of Assessment, dated 07.12.2016, the petitioner has been directed to pay a sum of Rs.6,07,702/-, being the balance amount of tax, payable for the assessment year 2015-2016, under the provisions of Central Sales Tax, 1956.

3. As against the order of assessment, dated 07.12.2016, the petitioner has preferred an Appeal to the second respondent/Joint Commissioner (CT) Appeals, Chennai. As condition precedent, for entertaining the Appeal, the petitioner has paid 25% of the disputed tax. In the Stay Petition filed before the second respondent, in S.P.No.31 of 2017 in A.P.No.30 of 2017, the Appellate Authority has granted an order

of interim stay, subject to the condition that, the petitioner pays 25% of the disputed tax over and above the 25% already paid, and to furnish bank guarantee to the satisfaction of the first respondent/Assessing Officer for the balance of tax of Rs.6,07,702/-. The interim stay order states that, the stay will be in force for a period of six months, or till the disposal of the Appeal, whichever is earlier. The petitioner has complied with the conditional stay order, dated 15.03.2017, i.e., by paying 25% of the disputed tax and furnished bank guarantee for the balance amount. This has been acknowledged by the first respondent/Assessing Officer, vide endorsement made in the Letter Delivery Book, dated 13.04.2017. The Appeal is yet to be disposed of, by the second respondent and the same is pending. In the meantime, the impugned notice has been issued for recovery of the balance tax.

4. This Court, on earlier occasions has considered the validity of such orders of stay, restricting it for a period of six months or till the disposal of the Appeal, whichever is earlier. The Court pointed out that, if, for no fault committed by the petitioner, the Appeal is pending, then, the order of stay should continue till the disposal of the Appeal, and therefore, the order of stay should read that, there will be a stay for six

months or till the disposal of the Appeal, whichever is later. Thus, manner, in which, the Appellate Authority has passed the interim order is incorrect. The petitioner having complied with the condition imposed by the Appellate Authority, they are entitled for a stay till the disposal of the Appeal. Accordingly, the impugned demand notice is set aside, and it is clarified that the impugned demand of balance tax of Rs.6,07,702/- shall remain stayed till the disposal of the Appeal, in A.P.No.30 of 2017 pending on the file of the second respondent.

6. In the result, this Writ Petition is allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

12.10.2017

kas/sd
Index : yes/no

Note: Issue order copy on 13.10.2017

To

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T.S.Sivagnanam , J.

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