IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2017

CORAM:

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.26728 of 2017
and
W.M.P.No.28455 of 2017

M/s. Consul Neowatt Power Solutions Pvt. Ltd.,
Represented by its Chief Financial Officer,
N.Yogeshwaran,
No.119, Developed Plots,
Electrical & Electronics Indl. Estate
Perungudi, Chennai - 600 096. ... Petitioner

Versus

1. The Assistant Commissioner (CT),
   Thiruvanmiyur Assessment Circle,
   Burma Colony, Perungudi,
   Chennai - 600 096.

2. The Appellate Deputy Commissioner (ST) (East) {FAC}
   CT Building Annexe, III Floor,
   Greams Road,
   Chennai - 600 006. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records on the files of the Second Respondent herein in S.P.No.64/2017 in A.P.V.No.78/2017, dated 14.09.2017, arising out of A.P.V.No.78/2017, (TNVAT: 2009-10), quashing the same, insofar as it relates to the direction to furnish Bank Guarantee for the balance amount of Tax and Penalty of Rs.4,65,925/-.

For Petitioner : Mr. N. Prasad

For Respondents : Mr. K. Venkatesh,
Government Advocate

O R D E R

Heard Mr. N. Prasad, 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 had preferred an Appeal as against the order of assessment, dated 17.04.2017, passed by the first respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the assessment year 2009-10. Even before the Appeal was presented, the petitioner has paid 95% of the disputed tax. The disputed tax being Rs.3,28,551/-; the petitioner has paid a sum of Rs.3,26,080/-; and the balance amount of tax including penalty is Rs.4,95,295/-. The second respondent/Appellate Authority entertained the Appeal in A.P.V.No.78 of 2017. When the petitioner moved a Petition for stay of the remaining amount of tax and penalty, by filing S.P.No.64 of 2017, the second respondent has directed the petitioner to file a bank guarantee for total amount of Rs.4,95,295/-.

3. In my considered view, since the petitioner has already paid 95% of the disputed tax, the interest of the Revenue is sufficiently safeguarded, hence, it would be suffice, if the petitioner furnishes a bond for the balance amount of tax and penalty of Rs.4,95,295/-, and keep the bond alive till the disposal of the Appeal. While granting an order of stay, the second respondent has stated that there will be an order of stay for a period of six months or till the disposal of the Appeal, whichever is earlier. The manner, in which, the stay order passed is incorrect, because, if the Appeal is not disposed within six months, then, the order of stay would stand vacated. Therefore, proper language to be adopted is to restrict the order of stay for a period of six months and dispose of the Appeal within such time, or to state that the order of stay shall continue till the disposal of the Appeal, whichever is later.

4. With this clarification, the Writ Petition is partly allowed, and the condition imposed by the second respondent in the impugned order with regard to furnishing of bank guarantee is set aside, and the condition is modified to the following effect:-

i) The petitioner shall execute a personal bond for the balance tax amount and penalty of Rs.4,95,295/- for the assessment year 2009-10, in lieu of furnishing bank guarantee, within a period of two weeks from the date of receipt of a copy of this order, and keep the bond alive till the disposal of the Appeal by the second respondent/Appellate Authority.

5. In the result, the Writ Petition is partly allowed, as indicated above. No costs. Consequently, connected Writ Miscellaneous Petition is closed

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sd

To

1. The Assistant Commissioner (CT),
   Thiruvanmiyur Assessment Circle,
   Bhurma Colony,
   Perungudi, Chennai - 600 096.

2. The Appellate Deputy Commissioner (ST) (East) {FAC}
   CT Building Annexe, III Floor,
   Greams Road,
   Chennai - 600 006.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.73221
+1cc to the Special Government Pleader(T), S.R.No.73529

W.P.No.26728 of 2017

GMR(CO)
CA(13/10/2017)