IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2017

CORAM:

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

W.P.Nos.26729 to 26735 of 2017
and
W.M.P.Nos.28456 to 28462 of 2017

W.P.Nos.26729 to 26735 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 in all WPs

Versus

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. ... Respondents in all WPs

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari,

W.P.No.26729 of 2017 : Calling for the records on the files of the Second Respondent herein in S.P.No.65/2017 in A.P.V.No.79/2017, dated 14.09.2017, arising out of A.P.V.No.79/2017, (TNVAT: 2010-11), quashing the same, insofar as it relates to the direction to furnish Bank Guarantee for the balance amount of Tax and Penalty of Rs.15,27,788/- and penalty of Rs.45,83,362/- in all a sum of Rs.61,11,149/-.

W.P.No.26730 of 2017 : Calling for the records on the files of the 2nd respondent herein in S.P. No. 66/2017 in A.P.V. No.80/2017 dt 14.9.2017 arising out of A.P.V. No.80/2017 (TNVAT:

2011-12), quashing the same, in so far as it relates to the direction to furnish Bank Guarantee for the balance amount of Tax of Rs.21,20,004/- and Penalty of Rs.63,60,013/- in all a sum of Rs.84,80,017/-.

W.P.No.26731 of 2017 : Calling for the records on the files of the 2nd respondent herein in S.P. No. 67/2017 in A.P.V. No.81/2017 dt 14.9.2017 arising out of A.P.V. No.81/2017 (TNVAT: 2012-13), quashing the same, in so far as it relates to the direction to furnish Bank Guarantee for the balance amount of Tax of Rs.27,84,979/- and Penalty of Rs.83,54,939/- in all a sum of Rs.1,11,39,918/-.

W.P.No.26732 of 2017 : Calling for the records on the files of the 2nd respondent herein in S.P. No. 70/2017 in A.P.V. No.84/2017 dt 14.9.2017 arising out of A.P.V. No.84/2017 (TNVAT: 2013-14), quashing the same, in so far as it relates to the direction to furnish Bank Guarantee for the balance amount of Tax of Rs.22,74,725/- and Penalty of Rs.68,24,174/- in all a sum of Rs.90,98,899/-.

W.P.No.26733 of 2017 : Calling for the records on the files of the 2nd respondent herein in S.P. No. 68/2017 in A.P.V. No.82/2017 dt 14.9.2017 arising out of A.P.V. No.82/2017 (TNVAT: 2014-15), quashing the same, in so far as it relates to the direction to furnish Bank Guarantee for the balance amount of Tax of Rs.13,99,008/- and Penalty of Rs.41,97,026/- in all a sum of Rs.55,96,034/-.

W.P.No.26734 of 2017 : Calling for the records on the files of the 2nd respondent herein in S.P. No.71/2017 in A.P.V. No.85/2017 dt 14.9.2017 arising out of A.P.V. No.85/2017 (TNVAT: 2015-16), quashing the same, in so far as it relates to the direction to furnish Bank Guarantee for the balance amount of Tax of Rs.71,944/- and Penalty of Rs.2,15,832/- in all a sum of Rs.2,87,776/-.

W.P.No.26735 of 2017 : Calling for the records on the files of the 2nd respondent herein in S.P. No.69/2017 in A.P.V. No.83/2017 dt 14.9.2017 arising out of A.P.V. No.83/2017 (TNVAT: 2016-17), quashing the same, in so far as it relates to the direction to furnish Bank Guarantee for the balance amount of Tax of Rs.1,754/- and Penalty of Rs.12,391/- in all a sum of Rs.15,927/-.

For Petitioner in all W.Ps. : Mr.N.Prasad

For Respondents in all W.Ps. : Mr.K.Venkatesh, Government Advocate

COMMON ORDER

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, these Writ Petitions are taken up for disposal.

2. The petitioner has filed Appeals against the orders of assessment passed by the first respondent, under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as ''TNVAT Act''). The Appeals have been taken on file by the second respondent, in A.P.V.Nos.79 to 85 of 2017. At the time of presenting the Appeals, the petitioner has complied with the mandatory pre-deposit of 25% of the disputed tax for each of the assessment years. The petitioner sought for stay of the remaining amount of tax and penalty, by filing Stay Petitions in S.P. Nos. 63 to 71 of 2017. The second respondent/Appellate Authority has passed impugned orders, dated 14.09.2017, by directing the petitioner to pay further 25% of the disputed tax, and to furnish bank guarantee for the remaining amount of tax and penalty. The petitioner has complied with the first condition and paid further 25% of the disputed tax. The petitioner is aggrieved by the condition imposed on them to furnish bank guarantee for the remaining amount of tax and penalty.

3. In my considered view, since already 50% of the disputed tax has been paid by the petitioner, this is suffice to safeguard the interest of the Revenue, and further safeguard can be made, by directing the petitioner to furnish a bond to the satisfaction of the first respondent for the remaining amount. This is so, because, the petitioner is a registered dealer on the file of the first respondent, and carrying on business within his jurisdiction. One more issue, which I wish to point out is that, the second respondent has granted an orders of interim stay for a period of six months or till the disposal of the Appeals, whichever is earlier. This is an error committed by the second respondent, in granting stay order, which has been set aside by this Court, in several cases. The order of stay should continue till the disposal of the Appeal. If the second respondent restricts the order of stay, then, he should hear and decide the Appeals, within such period, if it is not possible, then, the stay should continue till the disposal of the Appeals. Otherwise, the Appeals themselves would become infructuous. Therefore, proper wording that should have been adopted by the second respondent is to grant an order of stay for a period of six months or till the disposal of the Appeals, whichever is later.

4. With this clarification, the Writ Petitions are partly allowed, and the condition imposed by the second respondent in the impugned orders 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 for the respective assessment years, 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 Appeals by the second respondent/Appellate Authority.

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

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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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 the Special Government Pleader(T), S.R.No.73529

W.P.Nos.26729 to 26735 of 2017

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