IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.10.2017

Coram:

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

W.P.No.27193 of 2017
and
W.M.P.No.29060 of 2017

M/s. Larsen & Toubro Limited,
Rep. by its Manager (Corporate Indirect Taxation),
Chennai Regional Office, L & T Construction Campus,
TC1 Building, 2nd Floor,
979, Mount Poonamallee Road,
Manapakkam, Chennai - 600 089. ...Petitioner

Versus

1. The Joint Commissioner (CT), Appeals,
III Floor, CT Buildings Annexe, Greams Road,
Chennai - 600 006.

2. The Deputy Commissioner (CT) - II,
LTU, Marshall Road, Chennai - 8. ...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the impugned order in S.P.13/16 in A.P.16/16 (Extension) dated 05.10.2017, from the files of the first respondent herein, quash the same.

For Petitioner : Mrs. Aparna Nandakumar

For Respondents : Mr. K. Venkatesh,
Government Advocate

O R D E R

Heard Mrs. Aparna Nanadakumar, the learned counsel appearing for the petitioner and Mr. K. Venkatesh, the learned Government Advocate accepting notice on behalf of the respondents.

2. Since the controversy raised in this Writ Petition lies

in a narrow compass, with the consent of the learned counsel appearing on either side, this Writ Petition is taken up for disposal.

3. The petitioner, being aggrieved by the order of assessment, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "TNVAT Act") dated 30.10.2015 for the assessment year 2009-10, has preferred an Appeal before the first respondent/Joint Commissioner (CT) Appeals, Chennai. The Appeal has been taken on file on 07.03.2016 in A.P.16/16, and as a pre-condition for the Appeal to be entertained, the petitioner has effected payment of 25% of the disputed tax, and filed a Petition for an order of Interim Stay in S.P.No.13/16 in said Appeal. The first respondent passed an order, dated 07.03.2016 directing the petitioner to pay a further 25% of the disputed tax, and to furnish a Bank guarantee for the remaining disputed tax under Rule 14(15) read with the proviso to Section 52(4) of the TNVAT Act and granted stay for a period of six months or till the disposal of the Appeal, whichever is earlier. However, the petitioner sought for extension of the Stay Order for the sole reason that the petitioner has not filed any Writ Petition in respect of the revised assessment order for the assessment year 2009-10, whereas, they have filed the Writ Petitions in W.P.Nos.31968 to 31970 of 2015 challenging the assessment orders for the years 2006-07 to 2008-09, as could be seen from the typed-set of papers filed in support of this Writ Petition. The Writ Petitions pertains to reversal of Input Tax Credit (ITC) in respect of transfer of goods in Works Contract/Special Economic Zones (SEZs). With regard to the remaining issue, the petitioner was directed to agitate the same, presumably, as has been done by the petitioner for the assessment year 2009-10. In such factual circumstances, the first respondent was not justified in refusing to extend the order of stay, though the interest of the Revenue is fully safeguarded, that is to say, 50% of the disputed tax and the balance 50% was secured by way of Bank Guarantee. The Bank Guarantee filed by the petitioner for a sum of Rs.1,82,77,072/- (Rupees One Crore Eighty Two Lakh Seventy Seven Thousand and Seventy Two) shows that it is valid upto 03.04.2017. However, the record shows that the Bank guarantee is valid upto 02.04.2014, probably, due to falsity that the Bank guarantee stood extended.

4. Thus, I am satisfied that the interest of the Revenue is fully safeguarded and the first respondent is directed to consider and dispose of the Appeal Petition on merits and in accordance with law. Till the Appeal is heard and disposed of, the order of Interim Stay shall continue to operate. The petitioner shall keep the bank guarantee alive till the disposal of the appeal.

5. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrr

To

1. The Joint Commissioner (CT), Appeals,
III Floor, CT Buildings Annexe, Greams Road,
Chennai - 600 006.

2. The Deputy Commissioner (CT) - II,
LTU, Marshall Road, Chennai - 8.

+1cc to the Special Government Pleader, S.R.No.75018

W.P.No.27193 of 2017

MR(CO)
GN(02/11/2017)