IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.07.2017

Coram

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

Writ Petition Nos.19524 and 19525 of 2017
and
W.P.M.P.No.21089 to 21091 of 2017

Indian Oil Corporation Ltd.,
rep. by its Senior Manager (Finance)/TNSO,

...Petitioner in both Writ Petitions

Vs.

1. The Deputy Commissioner (CT) -IV,
Large Taxpayet Unit,
V Floor, Dugar Towers,
Marshall Road, Egmore,
Chennai - 600 008.

2. The Joint Commissioner (CT) Appeals,
C.T. Building (Annexe) III Floor,
Greams Road, Chennai - 600 006.

...Respondents in both Writ Petitions

Writ Petitions, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records on the files of the first respondent, in TNVAT No.33270460111/2012-13, dated 26.07.2017, and to quash the same insofar as it relates to recovery of tax, demand of Rs.13,66,00,521/- and Rs.54,42,154/- respectively, while directing the first respondent to forbear from initiating any further recovery proceedings, pending disposal of the Appeals before the second respondent, in A.P.No.88 of 2017 and A.P.No.172 of 2017 respectively, arising out of the assessment year, TNVAT : 2012-13.

For Petitioner : Mr.N.Prasad

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

COMMON O R D E R

Heard Mr.N.Prasad, the learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, the learned Additional Government Pleader, accepting notice on behalf of the respondents.

2. Since the issue involved in these Writ Petitions lie in a very narrow compass, with the consent on either side, these Writ Petitions are taken up together and disposed of, vide this common order.

3. In both the Writ Petitions, the petitioner is the Indian Oil Corporation Limited, and they are aggrieved by the demand/notices raised/issued by the first respondent, dated 26.07.2017, directing the petitioner, to pay the tax, as quantified for the relevant assessment orders, on the ground that, there is no stay in force, in the Appeals filed against those assessment orders.

4. The petitioner has filed Appeals as against two orders, both for the assessment year 2012-13, and both dated 26.07.2017, in A.P.No.88 of 2017 and A.P.No.172 of 2016, which have been heard by the second respondent. In A.P.No.88 of 2017, at the time, when the Appeal was presented, the petitioner has paid 25% of the disputed tax, and it appears that the Appellate Authority/second respondent has heard the arguments and reserved the same for orders on 25.07.2017. Thus, there has been no order of stay, granted by the second respondent, in effect, the Appeal itself has been heard, which would mean that the Appellate Authority was satisfied that, pre-deposit of 25% would safeguard the interest of the Revenue, pending disposal of the Appeal. However, the Appeal, being of the year, 2017, was heard and orders have been reserved on 25.07.2017. Insofar as, the other Appeal is concerned, viz., A.P.No.172 of 2016, the petitioner has paid 50% of the disputed tax before the Appellate Authority, and based on the same, the Appellate Authority granted an order of interim stay for a period of six weeks. Since the said interim stay has not been extended thereafter, the petitioner filed a Miscellaneous Petition, seeking for extension of the interim stay, which Petition was pending before the second respondent for consideration. However, in the interregnum period, the second respondent heard the Appeal itself, viz., A.P.No.172 of 2016, and reserved orders on 26.07.2017. The first respondent, in the impugned demand, stated that, since there is no stay in both the Appeals, he has called upon the petitioner to pay the entire tax amount.

5. In my considered view, the interpretation given by the first respondent to the effect that the pendency of the Appeals, and the effect of the order of stay granted in A.P.No.172 of 2016, and the fact that the Appeals have been heard and orders have been reserved on 25.07.2017 and 26.07.2017 respectively, has not been properly appreciated by the first respondent. In the assessee's own case, viz., in a batch of Writ Petitions, in W.P.Nos.3141 to 3143, 6294 etc., of 2016, dated 03.06.2016, after taking note of the decision of the Hon'ble Supreme Court, in the case of (Bharat Petroleum Corporation Ltd., Vs. Commissioner of Sales Tax and others) reported in (2008) 17 V.S.T. 162 (SC), it was held that 'payment of 25% at the time of lodging the Appeal would be sufficient to safeguard the interest of the Revenue', taking note of the fact that the petitioner is a Public Sector Undertaking. However, in the instant case, the small distinction is that, though the Appellate Authority granted interim stay on the petitioner's depositing 50% of the disputed tax, in A.P.No.172 of 2016, the Appellate Authority limited the stay only for a period of six weeks. However, the Appellate Authority has not disposed of the Appeal in A.P.No.172 of 2016, within a period of six weeks, and, if that be the case, then, he ought to have extended the Stay till orders are passed in the Appeal. This appears to have been not done by the Appellate Authority, inspite of the petitioner, seeking for extension of the stay order, by filing Miscellaneous Petition.

6. Thus, the proper interpretation would be that, order of stay should continue till the Appeal is disposed of, since no separate orders were passed by the Appellate Authority on the petitioner's Petition for extension of stay. Thus, considering the overall facts and circumstances of the case, the impugned demand raised by the first respondent, which is impugned in W.P.No.19525 shall remain stayed, since arguments in A.P.No.172 of 2016 has been heard by the Appellate Authority and orders have been reserved on 26.07.2017. Insofar as the impugned demand raised in W.P.No.19524 of 2017, the petitioner is directed to deposit another sum of Rs.1,00,00,000/-(Rupees One Crore only) as against the disputed tax liability within a period of two weeks from the date of receipt of a copy of this order, and till such time, no coercive action shall be initiated against the petitioner, pursuant to the impugned demand on compliance with the aforesaid condition, and taking note of the fact that the Appeal in A.P.No.88 of 2017 has been heard by the Appellate Authority and orders have been

reserved on 25.07.2017.

7. With the above direction and observations, both the Writ Petitions are disposed of. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1. The Deputy Commissioner (CT) -IV,
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V Floor, Dugar Towers,
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Chennai - 600 008.

2. The Joint Commissioner (CT) Appeals,
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Greams Road, Chennai - 600 006.

+1cc to Mr.N.Inbarajan, Advocate in sr.no.53773

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BR(CO)
NR 28/07/2017