IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.04.2018

Coram

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

Writ Petition No.7722 of 2018
and
W.M.P.Nos.9636 & 9637 of 2018

M/s.Council for Leather Exports,
CMDA Tower-II, 3rd Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai 600 008,
Rep. by Executive Director. ...Petitioner

Vs.

1.The Commissioner of Income Tax (Appeals)
Nungambakkam High Road, Chennai 600 034

2.Deputy Commissioner of Income Tax
(Exemptions) Chennai Circle
Nungambakkam High Road
Chennai 600 034

3.The Assistant Commissioner of Income Tax
(Exemptions) Chennai Circle
Nungambakkam High Road
Chennai 600 034 ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records and quash the order, bearing Reference No.AAACC4697G/2015-16 dated 21.03.2018 on the file of the third Respondent, the Assistant Commissioner of Income Tax, Exemption, Chennai Circle (IC), Chennai, and consequently, to restrain the respondents from initiating any proceedings for recovery of the sum of Rs.2,38,74,582/- till the disposal of the Appeal before the First Respondent.

For Petitioner : Mr. Ravi for M/s.Gupta & Ravi
For Respondents: Mrs. Hema Murali Krishnan
Senior Standing Counsel

O R D E R

Heard Mr. Ravi, the learned counsel for M/s.Gupta & Ravi, the learned counsel appearing for the petitioner and Mrs.Hema Murali Krishnan, the learned Senior Standing Counsel, accepting notice on behalf of the respondents. With consent of the learned counsel on either side, the Writ Petition is taken up for disposal.

2. The petitioner is aggrieved by the order passed by the third respondent, dated 21.03.2018, directing the petitioner to pay 20% of the disputed tax in respect of the assessment year 2015 - 2016.

3. The issue involved in the Writ Petition is a recurrent issue, and twice earlier, for the assessment years 2010-11 and 2012-13, the assessee has succeeded, and as against such order, Appeals have been filed by the Department to the Appellate Authority and the matter is pending. Insofar as the impugned assessment order for the AY 2015-16 is concerned, the Assessing Officer, in his order, dated 31.10.2017, observed that, he was aware of the fact that the ITAT, Chennai, held that the assessee is eligible to claim exemption under Section 10 (23) (iv), However, it was further observed that, as against the order of the ITAT, the Department has preferred an Appeal before the Devision Bench of this Court, yet, the relief was denied to the petitioner. As against the said order, the petitioner has preferred an Appeal and the same is pending. In the meantime, the petitioner moved a Petition for interim orders and the second respondent, vide order, dated 1.12.2017, granted stay of the entire demand pertaining to the assessment year 2015-16 till the disposal of the Appeal. The second respondent noted that the CIT (Appeals)-VII, in its order, dated 22.01.2014, has allowed the petitioner's Appeal for the year 2010-11 on identical issue on the account that, ITAT 'A' Bench, Chennai, has also passed an order in favour of the assessee on 26.06.2015, for the assessment year 2010-11. Though such was the order passed by the second respondent, third respondent, suo motto took the stay petition for further hearing and revised the order passed earlier. It is not known, as to how, the respondent has jurisdiction to revise earlier order passed by the second respondent, dated 01.12.2017, as the statute does not specifically empower the respondent to revise its earlier order. Therefore, prima facie, this Court is of the view that the impugned order passed by the third respondent, reviewing the earlier order is without jurisdiction.

4. Be that as it may, before the Commissioner of Income

Tax (Appeals) as well as before the ITAT, the petitioner has succeeded for the assessment years 2010-11 and 2012-13, and it is the Revenue, which is on Appeal. Therefore, balance of convenience is entirely in favour of the assessee/petitioner, which is also the Government of India undertaking sponsored by the Ministry of Commerce and Industry. Thus, the impugned order, directing the petitioner to pay 20% of the disputed tax is not sustainable in law.

5. For the above reasons, the Writ Petition is allowed, the impugned order is set aside. There will be an order of stay of collection of the tax pertaining to the assessment year 2015-16 till the disposal of the Appeal. The learned counsel appearing for the petitioner submitted that before the matter could be taken up, the third respondent has already taken a demand draft from the petitioner's bankers for a sum of Rs.36,00,000/- (Rupees Thirty Six Lakh only).

6. In the light of the above, the petitioner is granted liberty to submit a representation to the respondents 2 and 3 for repatriation of the said amount of Rs.36,00,000/- to the bank account of the petitioner. If such representation is made, the respondents 2 and 3 shall consider the same, bearing in mind the observation made by the second respondent, in the earlier order, dated 31.10.2017 as well as the observation made in the order, dated 01.12.2017, while granting stay of the entire demand. Such decision should be taken within a period of two weeks from the date on which the representation is made.

7. The Writ Petition is allowed, as indicated above. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Income Tax (Appeals)
Nungambakkam High Road, Chennai 600 034

2.Deputy Commissioner of Income Tax
(Exemptions) Chennai Circle
Nungambakkam High Road
Chennai 600 034

3.The Assistant Commissioner of Income Tax
(Exemptions) Chennai Circle
Nungambakkam High Road
Chennai 600 034

+1cc to Mr.Gupta and Ravi, Advocate, S.R.No.24582

+1cc to Mr.Hema Murali Krishnan, Advocate, S.R.No.24698

GSP(12/04/2018)