In the High Court of Judicature at Madras

Dated : 18.1.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.1104 of 2018 & WMP.No.1365 of 2018

M/s.Manali Petrochemicals Ltd.,
rep. by its Deputy General
Manager ...Petitioner

Vs

1.The Assistant Commissioner (CT),
Alandur Assessment Circle,
Chennai-16.

2.The Appellate Deputy Commissioner
(CT) (East), Greams Road, Chennai-6. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in his proceedings in TIN No.33436220368/2007-08, quash the recovery notice dated 15.12.2017 in so far as it relates to the recovery of penalty of Rs.6,05,517/- and further grant an absolute stay pending disposal of the appeal in A.P.No.15/2017 on the files of the second respondent.

For Petitioner : Mr.P.V.Sudakar
For Respondents: Ms.G.Dhana Madhri, GA

ORDER

Ms.G.Dhana Madhri, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved by the demand notice issued by the first respondent - their Assessing Officer calling upon the petitioner to pay tax and penalty as determined in the order of assessment dated 09.6.2015 for the assessment year 2007-08 under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

3. As against the order of assessment, the petitioner preferred an appeal before the second respondent in A.P.No.15/2017 and prayed for stay in S.P.No.15/2017. The second respondent, by order dated 10.3.2017, granted an interim order of stay subject to the condition that the petitioner should furnish bank guarantee to the satisfaction of the Assessing Officer for the balance tax of Rs.6,05,517/- and that the bank guarantee should be kept valid for a period of six months. However, the second respondent restricted the stay order for a period of six months or till the disposal of the case, whichever is earlier from the date of issue of the order.

4. Aggrieved by such condition, the petitioner filed W.P.Nos.7896 and 7897 of 2017 in respect of the appeals for two assessment years and this Court, by a common order dated 04.4.2017, disposed of the said writ petitions modifying that portion of the condition imposed by the second respondent by directing the petitioner to execute a personal bond instead of bank guarantee. The problem occurred on account of the fact that the second respondent, though restricted the order of interim stay for a period of six months, was unable to dispose of the appeal. Taking advantage of this, the first respondent has now issued the demand notice.

5. This Court finds that the procedure adopted by respondents 1 and 2 is wholly arbitrary. If the second respondent was confident of disposing of the appeal within a particular date, he should have done so and if he was of the opinion that he could dispose of the appeal within six months, he should have passed final orders within such time. However, he was unable to dispose of the appeal within such time. In such circumstances, the second respondent should have granted an order of interim stay for a period of six months or till the disposal of the appeal, whichever is later.

6. In fact, this Court made such observations in its earlier orders. But, the Appellate Authority has not paid any heed to such observations. At least, in future, the Appellate Authorities should adhere to the same while restricting the order of stay and should state that it shall be for a period of six months or till the disposal of the appeal, whichever is later. This would prevent multiplicity of proceedings, as this Court had occasions to entertain several writ petitions on similar grounds. For all the above reasons, the impugned demand is held to be premature and not sustainable for the present.

7. Accordingly, the writ petition is allowed, the impugned demand notice is set aside and the order of interim stay granted

by the Appellate Authority shall continue till the disposal of the appeal in A.P.No.15/2017. No costs. Consequently, the connected WMP is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1.The Assistant Commissioner (CT), Alandur Assessment Circle, Chennai-16.

2.The Appellate Deputy Commissioner (CT) (East), Greams Road, Chennai-6.

+ 1 cc to Mr.B.Raveendran, Advocate,SR.3877

+ 1 cc to The Govt.Pleader, SR.4651

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pvs(co)
nr 12/02/2018