IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.1479 of 2016
and C.M.P.No.18380 of 2016

Lanco Infratech Ltd.
Represented by Vice President (Finance & Accounts)
Mr.Yogesh Indravadan Shah
25, G.N.Chetty Road, T.Nagar
Chennai 600 017. ... Appellant

Vs

The Assistant Commissioner (CT)
T Nagar (East) Assessment Circle
No.46, Greenways Road
Chennai 600 028. ...Respondent

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed by this Court in W.M.P.No.28934 of 2016 in W.P.No.17749 of 2014 dated 23.09.2016.

Prayer in W.M.P.No.28934 of 2016:
Petition is filed to modify the order dated 26.07.2016 passed in M.P. No 1 of 2014 in W.P.No.17749 of 2014 on the file of this Hon'ble Court pending W.P.No.17749 of 2014.

W.P.No.17749 of 2014:
Petition is filed to issue a Writ of Certiorari to call for the records of the respondent in Assessment order TIN 33641-561488/2012-2013 dated 30.04.2014 and quash the same.

For Appellant : Ms.A.Bakkiyalakshmi
For Respondent : Mr.M.Hariharan,
Government Advocate (Tax)

JUDGMENT
(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

This intra court appeal is directed against the order dated 23 September, 2016 in W.M.P.No.28934 of 2016, whereby and whereunder, the learned Single Judge dismissed the application for modification of the order dated 26 July 2016 in M.P.No.1 of 2014 in W.P.No.17749 of 2014.

2. Heard the learned counsel for the appellant and the learned Government Advocate for the respondent.

3. The appellant without availing the statutory remedy of appeal, filed the writ petition in W.P.No.17749 of 2014 challenging the assessment order dated 30 April, 2014 on the file of the respondent. The learned Single Judge notwithstanding the alternative remedy available to the appellant, entertained the writ petition and granted interim stay subject to the condition that 5% of the tax amount shall be deposited. Subsequently, as a condition precedent for making the stay absolute, the learned Single Judge directed the appellant to pay 10% of the tax amount, in addition to the amount already paid. The said order is under challenge in this intra court appeal.

4. The order under appeal is purely a discretionary order granted by the learned Single Judge for the purpose of making the stay absolute. It is not in dispute that notwithstanding the appeal remedy available to the appellant, the writ petition was filed. The learned Single Judge while exercising the discretion, originally directed the appellant to pay 5% of the tax amount and thereafter, 10% for the purpose of making the stay absolute. We do not find any illegality or irregularity in the order passed by the learned Single Judge warranting interference by exercising the discretionary jurisdiction.

5. We grant four more weeks time to the appellant to deposit the 10% of the amount as directed by the learned Single Judge.

6. The writ appeal is dismissed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

gms

To

The Assistant Commissioner (CT)
T Nagar (East) Assessment Circle
No.46, Greenways Road
Chennai 600 028.

+1 CC to Ms. Joseph Prabakaran, Advocate sr 6735.
+1 CC to Spl. Govt. Pleader sr 7031

W.A.No.1479 of 2016

NRI(CO)
SP(23/02/2018)