IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.31719 and 31723 of 2018
and
W.M.P.Nos.36947 and 36948 of 2018

MMTC PAMP INDIA PVT.LTD.
Shop No.52FF, Sri Lakshmi Complex,
Cross Cut Road, Coimbatore - 641 012
Though its Authorized Representative,
K.C.Joy. ... Petitioner in both the W.Ps.

vs.

1. Government of State of Tamil Nadu,
   though its Principal Secretary (Finance)
   Namakkal Kavingnar Maaligai,
   Fort St.George,
   Chennai - 600 009.

2. Joint Commissioner (ST) (Appeals)
   Commercial Taxes Building,
   Dr.Balasundaram Road,
   Coimbatore - 641 018

3. Deputy Commissioner (ST),
   Divisional Large Tax Payers Unit,
   Commercial Taxes Building,
   Dr.Balasundaram Road,
   Coimbatore - 641 018. ... Respondents in both the W.Ps.

W.P.No.31719/2018 is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the stay order in S.P.No.2/2018 in A.P.No.5/2018 dated 02.11.2018 and quash the same to the limited extent it seeks to direct the petitioner to pay Rs.7,74,572/- being another 25% of the disputed tax and file a bank guarantee for the balance of tax of Rs.15,49,144/- and entire penalty due of Rs.30,98,289/- on or before 04.12.2018 as conditions for grant of stay.

W.P.No.31723/2018 is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the stay order in S.P.No.3/2018 in A.P.No.6/2018 dated 02.11.2018 and quash the same to the limited extent it seeks to direct the petitioner to pay Rs.16,56,935/- being another 25% of the disputed tax and file a bank guarantee for the balance of tax of Rs.33,13,871/- and entire penalty due of Rs.66,27,741/- on or before 04.12.2018 as conditions for grant of stay.

For Petitioner : Mr.Puneet Agrawal
for Mr.Karthik Sundaram

For Respondents : Mrs.G.Dhana Madhri,
Government Advocate (Tax)

COMMON ORDER

Mrs.Dhana Madhri, learned Government Advocate(Tax) takes notice for the respondents. By consent of the parties, the main writ petitions are taken up for final disposal.

2. These writ petitions are filed challenging the conditional orders of stay granted by the Appellate Authority.

3. It is contended that when the petitioner has already paid 25% of the disputed tax liability at the time of filing the appeals, imposing further condition to pay another 25% of the disputed tax liability and also to furnish bank guarantee for the remaining tax and for the entire penalty due, as a condition for granting stay, is onerous and unreasonable.

4. On the other hand, the learned Government Advocate submitted that the Appellate Authority has called upon the petitioner only to pay another 25% of the tax liability as has been done in the other cases and to furnish Bank guarantee for the remaining tax balance and for the entire penalty due and therefore, the petitioner is not justified in questioning such conditions. In other words, it is her contention that this conditional order alone will protect the interest of the revenue.

5. Heard both sides.

6. Perusal of the impugned orders passed by the Appellate Authority, more particularly, paragraph No.8 of the same, would show that the Appellate Authority has not indicated any specific reasons for imposing the condition for paying another 25% of the tax liability in addition to 25% paid along with appeal, except saying that the final outcome of the appeal is not of immediate imminence and that the merits of the case can be ascertained only in the subsequent hearing in due course.

7. No doubt, the Appellate Authority has discretion to grant conditional stay. However, it is not in dispute that the appeals

are filed by complying with payment of 25% of the disputed tax liability, a statutory obligation. Therefore, further direction or condition to pay another 25% of the tax liability as a condition to grant stay of the demand, should necessarily be supported with reasons, though not by elaborately dealing on merits but atleast with certain prima facie view on merits, justifying such imposition of condition. Needless to state that such prima facie view expressed in justification of the condition imposed for granting stay, is only for the limited purpose of interim relief, as such view is always open, either to be confirmed or changed, after finally hearing the appeal. If no reason is stated, it would only lead to a presumption that a mechanical approach was made instead of considering the stay petition with application of mind. Exercise of a discretionary power vested on a statutory authority should be made with application of mind and such exercise should be evident and apparently seen on the face of the order itself. If not, an allegation of non-application of mind or mechanical approach cannot be ruled out. Therefore, this Court is of the view that in the absence of any such prima facie observation or finding, this Court is inclined to remit the matter to the Appellate Authority to pass fresh orders on the stay petitions by giving prima facie reasons and findings, if the Appellate Authority chose to impose any conditions for granting stay.

8. Accordingly, both the Writ Petitions are allowed, the impugned orders are set aside and the matter is remitted back to the Appellate Authority to pass fresh orders on the stay petitions within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TO

1. The Principal Secretary (Finance),
Government of Tamilnadu,
Namakkal Kavingnar Maaligai,
Fort St.George,
Chennai - 600 009.

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Coimbatore - 641 018.

+2cc to Mr.Karthik Sundaram, Advocate, S.R.No.82538 & 82539

W.P.No.31719 & 31723 of 2018

RSV(CO)
GSP(03/12/2018)