BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3754 of 2018
and
WMP(MD)No.3883 of 2018

Sundaram Industries Private Ltd,
Rep.by its Authorised Signatory,
R.Balasubramanian,
211, South Veli Street,
Madurai - 625 001. ... Petitioner

Vs.

1.The Assistant Commissioner (CT),
Kamaraj Salai Circle,
Madurai - 625 020.

2.The Appellate Deputy Commissioner (CT),
Madurai (South), Madurai. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the files of the second respondent herein in S.P.No.17/2017 in CST.7/2017, dated 17.08.2017, quashing the same, while directing the second respondent herein to grant an absolute stay of collection of Tax of Rs.12,81,616/- in respect of the assessment year CST : 2015-16 till disposal of the appeal in A.P.CST.07/2017, as the petitioners have already filed a Bank Guarantee for the said amount.

For Petitioner : Mr.N.Inbarajan

For Respondents : Mr.K.Saravanan,
Government Advocate
for Mrs.S.Srimathy,
Special Govt.Pleader

ORDER

Heard Mr.N.Inbarajan, the learned counsel for the petitioner and Mr.K.Saravanan, the learned Government Advocate appearing for Mrs.S.Srimathy, the learned Special Government Pleader for the respondents.

2.The petitioner is an assessee registered with the first respondent. Aggrieved by an order of assessment dated 12.07.2017, the petitioner filed an appeal before the second respondent. The petitioner also took out an application for interim stay. The appellate authority by order dated 17.08.2017 has granted interim relief. The petitioner was put on terms. The petitioner in order to comply with the statutory requirement, already deposited 25% of the tax amount. As a condition for getting interim order 25% more was also paid. For the balance amount, bank guarantee was furnished. Even though both these conditions stipulated by the Appellate Authority were duly complied with by the petitioner, the Appellate Authority has chosen to grant stay for a period of six months or till the disposal of the case, whichever is earlier from the date of issuance of the order of stay.

3.This Court is of the view that since the conditions imposed by the Appellate Authority have been complied with in toto, absolute stay ought to have been granted till the disposal of the appeal. An appeal is a continuation of the original proceedings and when the petitioner had complied with the conditions there is absolutely no justification in limiting the interim stay for a period of six months or till the disposal of the case, whichever is earlier. If the appeal is not disposed of within a period of six months, it will cause a real prejudice to the petitioner. Such a situation is unacceptable.

4.In this view of the matter, this Court interferes with the Condition No.1 of the impugned order and directs that there shall be an order of absolute stay of collection of tax of Rs.12,81,616/- in respect of the assessment year CST:2015-16 till disposal of the appeal in A.P.CST.07/2017.

5.This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar

To

1.The Assistant Commissioner (CT),
Kamaraj Salai Circle,
Madurai - 625 020.

2.The Appellate Deputy
Commissioner (CT),
Madurai (South), Madurai.

+1cc to M/S.N.INBARAJAN, Advocate SR.No.50849.

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