IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.01.2019

CORAM
THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.568 of 2019
and
W.M.P.No.574 of 2019

Chennai Petroleum Corporation Limited
Represented by its Chief General Manager-Finance,
M.S.Raghunathan
Mount Road,
Chennai - 600 018. ...Petitioner

vs.

1. The Deputy Commissioner (CT)-III
Large Taxpayers Unit
Dugar Towers, 5th Floor
No.34, Marshalls Road
Egmore, Chennai - 600 008.

2. The Tamil Nadu Sales Tax Appellate Tribunal
Represented by its Secretary
New City Civil Court Buildings,
High Court Complex,
Chennai - 600 104. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the files for the second respondent herein in T.P.No.07 of 2018, in T.A.No.59 of 2018, dated 6th December 2018 (TNVAT A.Y. 2011-2012), quashing the same and direct the second respondent to redispose the stay application in T.P.No.07 of 2018 and in T.A.No.59 of 2018 dated 6th December 2018 in the light of the judgment of this Hon'ble Court in Indian Oil Corporation Ltd. Vs. Deputy Commissioner(CT)-IV, FAC, Chennai and others - in W.P.Nos.3141 to 3143, 6294 to 6296 and 8015 of 2016 dated 03.06.2016 and the judgment of the Hon'ble Supreme Court reported in Bharat Petroleum Corporation Ltd. Vs. Commissioner of Sales Tax and others reported in (2008) 17 VST 162 (SC).

For Petitioner : Mr.N.Prasad

For Respondents : Mr.M.Hariharan
Additional Government Pleader

ORDER

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondents. By consent of the parties, this main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is a Public Sector Company. The present writ petition is filed aggrieved against the order passed by the second respondent/Appellate Tribunal in calling upon the petitioner to furnish the bank guarantee over the disputed penalty amount to the satisfaction of the Assessing Officer as a condition for grant of stay till the disposal of the appeal before the second respondent.

3. The petitioner is an assessee on the file of the first respondent. An order of assessment dated 25.01.2016 was passed imposing tax to the tune of Rs.50,58,04,756/- and penalty to the tune of Rs.50,57,30,687/-. The petitioner preferred an appeal before the first Appellate Authority who, in turn disposed the appeal on 02.03.2017, sustaining the reversal of input tax credit on alleged non-VAT goods. The petitioner preferred further appeal before the second respondent disputing the tax demand as well as the penalty. It is stated that during the pendency of the appeal, the entire tax demand was complied with and thus, as on date, there are no tax arrears. The petitioner presented an application for stay before the second respondent against recovery of penalty. In that stay application, the second respondent has passed the impugned order.

4. The learned counsel appearing for the petitioner submitted that the petitioner being a Public Sector Company cannot be imposed with such onerous condition for granting stay of recovery of penalty, which is the subject matter of the appeal before the second respondent. The learned counsel in support of his contention relied on a decision of the Hon'ble Supreme Court in the case of Bharat Petroleum Corporation Ltd., Vs. Commissioner of Sales Tax and Others reported in (2008) 17 VST 162 (SC) and another decision of this Court made in W.P.Nos.3141 to 3143, 6294 to 6296 and 8015 of 2016 dated 03.06.2016.

5. The learned Additional Government Pleader appearing for the respondents is not disputing the fact that the issue involved in this case is covered by those decisions.

6. Perusal of the above said decisions of the Apex Court as well as this Court would show that the respective assessees therein, who are similar Oil Corporations were given the relief of providing personal bond instead of furnishing bank guarantee, under similar circumstances.

7. Considering the above stated facts and circumstances and in view of the orders passed by the Apex Court as well as this Court as referred supra, this writ petition is allowed and the impugned order of the second respondent is modified to the effect that the petitioner instead of furnishing Bank guarantee, shall furnish personal bond for the disputed penalty of Rs.44,97,03,120/- to the satisfaction of the Assessing Officer within a period of three weeks from the date of receipt of a copy of this order. If the petitioner fails to furnish such personal bond within the time stipulated herein, the order passed by the second respondent stands restored. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

sni/mk

To

1. The Deputy Commissioner (CT)-III
   Large Taxpayers Unit
   Dugar Towers, 5th Floor
   No.34, Marshalls Road
   Egmore, Chennai - 600 008.

2. The Tamil Nadu Sales Tax Appellate Tribunal
   Represented by its Secretary
   New City Civil Court Buildings,
   High Court Complex,
   Chennai - 600 104.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.2108

W.P.No.568 of 2019

rrs 11/01/2019