IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.1263, 1266 & 1269 of 2019
and
W.M.P.Nos.1416, 1419 & 1422 of 2019

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

...Petitioner in all the W.Ps.

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 in all the W.Ps.

Writ Petitions 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 of the second respondent herein in T.P.No.11 of 2017, T.P.No.12 of 2017 & T.P.No.19 of 2017 in T.A.No.45 of 2017, T.A.No.46 of 2017 & T.P.No.54 of 2017 respectively dated 6th December 2018(TNVAT A.Y. 2010-11) quashing the same and direct the second respondent to redispose the stay application in T.P.No.11 of 2017, T.P.No.12 of 2017 & T.P.No.19 of 2017 in T.A.No.45 of 2017, T.A.No.46 of 2017 & T.A.No.54 of 2017 respectively dated 6th December 2018 in the light of the judgment of this 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 3.6.2016 and the judgment of the Hon'ble Supreme Court reported in Bharat Petroleum Corporation Ltd. Vs. Commissioner of Sales Tax and other reported in (2008) 17 VST 162 (SC).

For Petitioner
in all the W.Ps. : Mr.Parthasarathy
for Mr.N.Inbarajan

For Respondents
in all the W.Ps. : Mr.V.Haribabu
Additional Government Pleader(T)

C O M M O N   O R D E R

Mr.V.Haribabu, learned Additional Government Pleader takes notice for the respondents. By consent of the parties, the main writ petitions are taken up for final disposal at the admission stage itself.

2. The petitioner is a Public Sector Company. The present writ petitions are filed challenging the conditional interim order granted by the second respondent, wherein and whereby, the petitioner is directed to furnish bank guarantee for the disputed penalty in respect of each assessment year.

3. The petitioner is an assessee on the file of the first respondent. The orders of assessment were passed by the Assessing Officer on, 23.06.2015 for the assessment year 2014-15, 30.02.2015 for the assessment year 2010-11 and 31.08.2016 for the assessment year 2015-16. The petitioner preferred appeals before the Joint Commissioner (Commercial Tax) Appeals, who in turn rejected the appeals on 07.02.2017. Challenging the said order, the petitioner preferred further appeals before the Tribunal, namely, the second respondent herein. It is stated that during the pendency of the appeals, the entire tax demand was complied with and thus, as on date, there are no tax arrears. The petitioner presented applications for stay before the second respondent against recovery of penalty. In that stay applications, the second respondent has passed the impugned orders.

4. The learned counsel appearing for the petitioner further 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 appeals 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. Learned counsel for the petitioner further submitted that in similar matter, this Court in W.P.No.568/2019, filed by the very same petitioner, granted the relief to the petitioner by order dated 09.01.2019, wherein and whereby, the order of the Tribunal was modified to the effect to furnish personal bond instead of furnishing bank guarantee. He has also produced a copy of the said order made in W.P.No.568/2019.

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, these writ petitions are allowed and the impugned orders of the second respondent are modified to the effect that the petitioner, instead of furnishing Bank guarantee, shall furnish personal bond for the disputed penalty of Rs.55,82,85,736/-, Rs.10,61,45,912/- & Rs.5,83,95,585/- respectively 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 bonds within the time stipulated herein, the orders passed by the second respondent stand restored. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Commissioner (CT)-III
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Egmore,
Chennai - 600 008.

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

+1cc to Mr.N.Inbarajan, Advocate sr.no.3583

W.P.Nos.1263, 1266 & 1269 of 2019

rk(co)
nr 21/01/2019