IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.4884, 4887, 4889, 4890 and 4891 of 2021
and
WMP Nos.5491, 5497, 5501, 5500 and 5495of 2021

M/s.NLC India Limited,
(formerly Neyveli Lignite Corporation)
represented by its Deputy Manager/Finance/M&S
Mr.Bikram Keshari Das
J.N.Salai, Block 26,
Neyveli - 607 803.

…Petitioner in all the above W.Ps

Vs

1.Appellate Deputy Commissioner (ST),
St. Joseph's Road, Manjakuppam,
Cuddalore.
2.The Assistant Commissioner,
Cuddalore Assessment Circle,
Station:8, Sub-jail Road, Manjakuppam,
Cuddalore.

…Respondents in all WPs

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus to call for the records relating to the impugned stay order in S.P.NoS.09, 15, 10, 16 and 11/2020 in A.P.Nos.01, 02, 03, 04 and 05/2021 dated 27.01.2021 ordered by the 1st respondent, quash the same and direct the 1st respondent to grant absolute stay of the remaining tax and penalty demand.

For Petitioner : Mr.Raghavan Ramabadran

For Respondents: Mr.ANR.Jayaprathap,
Government Advocate

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C O M M O N O R D E R

Mr.ANR.Jayaprathap, learned Government Advocate accepts notice for the Commercial Tax Authorities and is armed with instructions to proceed finally in the matter. Hence, by consent expressed by both learned counsel and, in fact, at their request, this batch of five Writ Petitions are disposed finally even at the stage of admission.

2. The scope of Writ Petitions is limited to a challenge to interim orders passed by the first respondent rejecting the request for absolute stay of the demands of tax, interest and penalty arising out of assessments framed in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the periods 2011-12 to 2015-16.

3. First appeals are pending as against the assessments and stay applications have been filed relying on the prima facie case that the petitioner believes it has and the grounds of appeal filed indicate the basis on which the orders of assessment are challenged.

4. The first respondent, while disposing the stay applications has referred to the judgment of the Supreme Court in the case of Asst. CCE V. Dunlop India Limited (1985) 154 ITR 172) and extracted the observations referred to therein that 'where matters of Public revenue are concerned, it is almost important to realize that iterim orders ought not to be granted merely because a prima - facie case has been shown'.

5. The first respondent also relies upon a judgment of the Supreme Court in IDL Industries Ltd. V. State of Orissa (134 STC 62) to the following effect:

> "There is no straight jacket formula for grant of full (or) conditional stay (or) for refusal of stay. The most important factors to be considered are theprima-facie case and the harship to the assessee. Whether the tax has been collected by the dealer has also to be considered. The fourth factor is the balance of convenience or irreparable injury. Public interest is also another importance for consideration while granting stay."

In conclusion, she calls upon the petitioner to remit a further 25% of the disputed tax (apart from the 25% remitted as pre-deposit) and to furnish a security bond or a bank guarantee for the balance of tax and penalty, within a stipulated time.

6. Mr.Prathap would submit that the authority has extended some leeway to the petitioner by way of the impugned directions, reducing the quantum of tax to be deposited and directing that it furnish a security bond or a bank guarantee for the balance of tax and entire penalty. Proper discretion has been exercised, and there is no legal infirmity in the present case, warranting inteference, according to him.

7. Mr.Raghavan, learned consel for the petitioner relies on the judgment of the Surpreme Court in Bharat Petroleum Corp. Limited V. Commissioner of Sales Tax and others (17 VST 162). The assessee in that case, a Public Sector Undertaking (PSU), had challenged orders rejecting applications for stay. The Civil Appeals were allowed by the Bench, taking note that the assessee was a PSU engaged in PDS sales, in sound financial condition, and recording an undertaking from the counsel of that assessee, that in the event of the petitioner failing in the statutory appeals, the entire tax due would be paid along with interest, in line with the provisions of the Orissa Sales Tax Act,1947. This judgment has been applied in the case of Indian Oil Corporation V. The Deputy Commissioner (Ct) and another by a learned single Judge of this Court in W.P.Nos.3141 to 3143 of 2016 etc. batch (order dated 03.06.2016).

8. In the case of Bharat Petroleum (supra), the PSU was enaged in PDS sales, as a result that the Court felt that insistence upon deposit of the demands would compromise public interest. This enabling factor is absent in the case before me. However, the observations qua the status of the assessee as a PSU and the financial are directly applicable.

9. Moreover, a perusal of the impugned order reveals the three vital aspects to be looked into while disposing stay applications, i) prima facie case, ii) financial stringency and iii) balance of convenience, have not been adverted to. Financial soundness of this petitioner is not in question and the balance of convenience can be ascertained only after examination of whether a prima facie case has been made out.

10. I am thus of the view that the impugned order must be set aside for non-application of mind, to be re-done de novo after hearing the petitioner. For this purpose, the petitioner will appear before the first respondent on Wednesday, the 10th of March, 2021 at 10.30 a.m. without expecting any further notice in this regard, along with supporting materials, if any, in support of its request for stay. Upon hearing the petitioner and considering materials, if any that may be filed, orders will be passed within a period of four (4) weeks thereafter, ie., on or before 09.04.2021.

11. These Writ Petitions are disposed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

To

1.The Appellate Deputy Commissioner (ST),
St. Joseph's Road, Manjakuppam,
Cuddalore.
2.The Assistant Commissioner,
Cuddalore Assessment Circle,
Station:8, Sub-jail Road, Manjakuppam,
Cuddalore.

+5 ccs to M/s.Lakshmikumaran Advocate sr13060
+1 cc to the Special Government Pleader(sr14008)

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and
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