IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition Nos.8676 and 8678 of 2021
and WMP Nos.9214 and 9215 of 2021

M/s.Chennai Petroleum Corporation Ltd.,
(represented by its General Manager - Finance,
P.Rajasekar)
No.536, Anna Salai, Chennai - 600 018
.. Petitioner in both W.Ps

Vs

1 The Deputy Commissioner (CT) - III (FAC)
Large Taxpayers Unit
34, Marshalls Road, Egmore,
Chennai - 600 008.

2. The Joint Commissioner (CT) (Appeals)
Chennai, Papjm Annexure Building,
III Floor, Greams Road, Chennai - 600 006.
…Respondents in both W.Ps

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus calling for the records on the files of the 2nd respondent herein in SP Nos.05 & 06/2021 in A.P.No.TNVAT/07&08/2021 dated 11.03.2021, quash the same while directing the 2nd respondent to redispose the stay application in S.P.No.05&06/2021 in AP No.TNVAT/07&08/2021 dated 11.03.2021, respectively.

For Petitioner in both Wps. : Mr.N.Prasad
For Respondents in both Wps. : Mr.ANR.Jayaprathap Government Advocate

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COMMON ORDER

Mr.ANR.Jayaprathap, learned Special Government Pleader accepts notice for the respondents and expresses his readiness to proceed with the matter finally even at the stage of admission. Hence, by consent of both sides, these Writ Petitions are disposed finally at this stage.

2. The petitioner has challenged orders passed by the second respondent/Joint Commissioner (CT)(Appeals) dated 11.03.2021 in the stay applications filed by the petitioner, pending first appeals challenging orders of assessment under the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the periods 2012-13 and 2013-14 dated 19.07.2017 and 24.07.2017 respectively.

3. The aforesaid orders of assessment were earlier subject matter of Writ Petitions in W.P.Nos.24979 to 24982 of 2017 and an interim order was granted at the time of admission on 20.09.2017 to the effect that 25% of the disputed demand be paid, which condition has been complied with. Thereafter, and after completion of pleadings, the Writ Petitions have come to be disposed on 07.12.2020 wherein this Court relegated the petitioner to statutory appeal. Appeals have been filed and inter alia applications for stay were also filed, which have come to be disposed by way of the present impugned orders.

4. At first blush, I note that the impugned orders are non-speaking. The basis for decision in an application for interim protection would be the trifecta of whether there is a prima facie case, financial stringency and balance of convenience for grant of orders. The applications for stay filed by the petitioner are detailed and seeks to make out a case on the aspect of prima facie case as well as on balance of convenience citing the automatic charge created by virtue of Section 42 of the Act.

5. The petitioner, has on merits, relied upon the judgment of the Supreme Court in Commercial Tax Officer Vs A. Infrastructure Ltd. (87 VST 190) on the applicability of Section 19(12) relating to availment of Input Tax Credit (ITC) and whether the grant of ITC would be pro-rata in a case where a part of the product manufactured were liable to tax and the remaining, not liable to charge.

6. As far as financial stringency is concerned, there is no quarrel on the position that the petitioner has sufficient resources to meet the liability, if and when such liability becomes confirmed and demand is raised.

7. The aforesaid case law has been noticed by the first appellate authority, who rightly states that the grant or refusal of a request for stay is a matter of exercise of discretion. Having said so, it then becomes incumbent upon him to consider the three factors for grant of stay or rejection

thereof and pass a speaking order on the applicability of the aforesaid factors to the facts and circumstances as well as the legalities that arise in a particular case.

8. However, this has not be done in the present matter and the first appellate authority proceeds to pass a rather mechanical order calling upon the petitioner to remit a further 25% of tax and furnish a bank guarantee for the balance. This is akin to orders that are routinely passed in stay applications and ought not to be passed, as a matter of rote. The impugned orders are set aside.

9. Let the petitioner be heard and orders passed afresh on the stay applications, within a period of four (4) weeks from today. Till such time, no proceedings for recovery shall be initiated.

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

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

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Chennai - 600 008.

2. The Joint Commissioner (CT) (Appeals)
Chennai, Papjm Annexure Building,
III Floor, Greams Road, Chennai - 600 006.

+1cc to Mr.N.Prasad, Advocate, SR.No.22050.
+1c to the Government Pleaderm, SR.No.22600.

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GPL(CO)
CSR 28.04.2021