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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.2232 of 2022
and W.M.P.Nos.2402 & 2403 of 2022

Air Liquide Medical Systems Private Limited
Represented by its Managing Director
Mr.Anil Kumar, Campus Tek Meadows
5th Floor, Tower 'B', No.51, Rajiv Gandhi Salai
Sholinganallur, Chennai - 119. ... Petitioner

-Vs-

1.The Deputy Commissioner of Income Tax
Corporate Circle 1(1), Chennai
Room No.611, Wanaparthy Block
VI Floor, No.121, Mahatma Gandhi Road
Nungambakkam, Chennai - 600 034.

2.Commissioner of Income Tax (Appeals)
National Faceless Appeal Centre
Delhi. ... Respondents

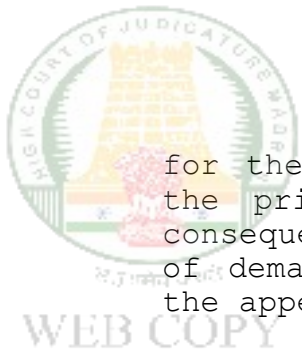
Prayer : Writ Petitions under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the first respondent in PAN AAACE8420F and quash the impugned order in ITBA/COM/F/17/2021-22/1037956325(1) dated 20.12.2021 for the Assessment Year 2018-19 as illegal, arbitrary, against the principles of natural justice and devoid of merits and consequently direct the 1st respondent to grant stay of recovery of demand for the Assessment Year 2018-19 pending disposal of the appeal preferred by the petitioner before the 2nd respondent.

For Petitioner : Mr.Raghav Rajeen Menon
for M/s.R.Sivaraman

For Respondents : Mr.D.Prabhu Mukunth Arunkumar
Junior Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records on the file of the first respondent in PAN AAACE8420F and quash the impugned order in ITBA/COM/F/17/2021-22/1037956325(1) dated 20.12.2021



for the Assessment Year 2018-19 as illegal, arbitrary, against the principles of natural justice and devoid of merits and consequently direct the 1st respondent to grant stay of recovery of demand for the Assessment Year 2018-19 pending disposal of the appeal preferred by the petitioner before the 2nd respondent.

2. In respect of the petitioner/assessee, scrutiny assessment under Section 143(3) read with Section 143(3A) and 143(3B) of the Income Tax Act, 1961 (In short 'the Act') for the Assessment Year 2018-19 was completed on 26.03.2021, which resulted in a demand of Rs.12,86,72,780/-.

3. As against the said order, the petitioner/assessee already preferred an appeal before the Commissioner of Income Tax (Appeals) and the appeal is pending. In the meanwhile the petitioner, by invoking Section 220(6) of the Act, filed a petition on 12.04.2021 for grant of stay of the assessment order pending appeal. The said application submitted under Section 220(6) of the Act having been considered, was decided by an order dated 20.12.2021, under which, by quoting the circumstances under which a blanket stay can be given under Section 220(6) of the Act and also by relying upon the instructions issued by the Department in Instruction No.1914 dated 29.02.2016, the assessing authority has passed the said order dated 20.12.2021, stating that the petitioner shall pay at least 20% of the demand, otherwise he may not be entitled for stay. Aggrieved over the said order passed by the assessing authority, the present writ petition has been filed.

4. Heard Mr.Raghav Rajeev Menon, learned counsel appearing for the petitioner, who would submit that, when an application is filed under Section 220(6) of the Act, where certain grounds have been raised, to have a prima facie satisfaction of the assessing authority that the petitioner has got a presentable case before the appellate authority, which is pending consideration before the said authority, and during the interregnum, as an interim arrangement, stay can be granted, which is possible under Section 220(6) of the Act.

5. In this context, the present condition imposed that unless the petitioner/assessee makes a payment of 20% of the demand, the petitioner/assessee is not entitled for stay is an exorbitant condition without considering the grounds raised by the petitioner in the application submitted by the petitioner under Section 220(6) of the Act, he contended.

6. Learned counsel for the petitioner also relied upon some of the decisions of the Writ Court ie., this Hon'ble Court, where he heavily relied upon the order of the learned Single Judge dated 08.04.2021 made in W.P.(MD) No.5550 of 2020 in the matter of "Queen Agencies -Vs- The Assistant Commissioner of Income Tax, Circle-1 and Others" , where he relied upon the following portions.



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" 12. The learned counsel on either side bring it to my notice that the decision of the Delhi High Court was put to challenge before the Hon'ble Supreme Court in MANU/SC/0907/2018 : (2018) 18 SCC 447 (Principal Commissioner of Income Tax -Vs- LG Electronics India Private Limited). Based on the submission of the learned Additional Solicitor General, the Hon'ble Supreme Court clarified that in all cases arising under Section 220(6) of the Act, it will be open to the authorities on the facts of individual cases, to grant deposit orders of a lesser amount than 20% pending appeal. This was laid down by the Hon'ble Supreme Court since it was submitted that the administrative circular will not operate as a fetter on the Commissioner since he is a quasi-judicial authority. Since the Assessing Officer is exercising quasi-judicial power by virtue of Section 220(6) of the Act, the implication of the clarification of the legal position by the Hon'ble Supreme Court is that the assessing officer can grant deposit orders of a lesser amount than 20% pending appeal without making reference to the administrative Pr.CIT/CIT. Reference of course has to be made if he is of the view that deposit order of a higher amount than 20% pending appeal is warranted."

7. He also relied upon another decision of this Court dated 13.12.2019 made in W.P.No.3849 of 2019 dated 13.02.2019 in the matter of "Mrs.Kannammal -Vs- Income Tax Officer, Tiruppur", where he relied upon the following portion.

" 14. The disposal of the request for stay by the petitioner leaves much to be desired. I am of the categorical view that the Assessing Officer ought to have taken note of the conditions precedent for the grant of stay as well as the Circulars issued by the CBDT and passed a speaking order. Of course the petition seeking stay filed by the petitioner is itself cryptic. However, as noted by the Supreme Court in the case of Commissioner of Income Tax Vs.Mahindra Mills ((2008) 296 ITR 85 (Mad)) in the context of grant of depreciation, the Circular of Central Board of Revenue (No.14 (SL-35_ of 1955 dated April 11, 1955) requires the officers of the department 'to assist' a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs..... Although, therefore, the responsibility for claiming refunds and reliefs rests with the assessee on



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whom it is imposed by law, officers should draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other.....'. Thus, notwithstanding that the assessee may not have specifically invoked the three parameters for the grant of stay, it is incumbent upon the assessing officer to examine the existence of a prima facie case as well as call upon the assessee to demonstrate financial stringency, if any and arrive at the balance of convenience in the matter.

15. I thus set aside impugned order dated 25.01.2019. The Assessing Officer is directed to pass orders de novo on the stay application filed by the petitioner in the light of the discussion as aforesaid, after hearing the petitioner, within a period of four weeks from date of receipt of a copy of this order. I have, for the aforesaid reason, consciously and deliberately refrained from referring to or making any observation on the merits of the assessment."

8. By relying upon these decisions, the learned counsel would submit that, as per the decision made by the Courts of Law, even though it is the discretion of the assessing authority to exercise his power under Section 220(6), he has to exercise such jurisdiction with caution and in each and every case it need not be a uniform order to make a payment of 20% as a condition precedent for grant of stay.

9. Therefore, the learned counsel seeks the indulgence of this Court by remanding the matter for re-consideration, where, after giving an opportunity of being heard to the petitioner, the issue raised by the petitioner can be considered and decided afresh, for which purpose the issue can be remanded back once again.

10. However, Mr.D.Prabhu Mukunth Arunkumar, learned Standing Counsel appearing on behalf of the respondents relied upon the very same decisions referred to by the petitioner's side and would contend that, insofar as exercising of the power by the assessing authority under Section 220(6) of the Act is concerned, it is purely a discretionary one, where, if at all a discretion has to be exercised, he must exercise such discretion within the parameters of the Instructions issued by the Department, where he very much relied upon the Instruction, according to which initially there was a minimum 50% of the demand to be paid and now it is 20% of the demand. Therefore, that 20% as of now has been directed to be paid for the purpose of getting stay, otherwise it is open to the assessee to make a



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further request to the Jurisdictional Commissioner before whom also the same plea can be made by the petitioner/assessee as that would be possible for the assessee because of the judgment made in (2018) 18 SCC 447 (Principal Commissioner of Income Tax -Vs- LG Electronics India Private Limited).

11. Therefore, according to the learned Standing Counsel for the respondent, if the petitioner/assessee is not satisfied with the present order to make a payment of 20% of the demand for getting stay of the assessment order pending appeal before the CIT (Appeals), he can very well approach the Commissioner for getting a better relief, if he so advised. Therefore, the present order does not warrant any interference even for remanding the matter back to the authority for re-consideration.

12. I have considered the submissions made by the learned counsel for both sides and have perused the materials placed on record.

13. Insofar as the case of the assessee is concerned, as against the order passed under Section 143(3) of the Act for the Assessment Year 2018-19 dated 26.03.2021, where a demand of Rs.12,86,72,780/- has been made, the petitioner/assessee already filed an appeal before the CIT (Appeals). The appeal is still pending and it may take some time to decide the appeal and so during the pendency of the appeal, the petitioner is entitled to seek for a stay, of course by invoking sub-section (6) of Section 220 of the Act.

14. If we look at the language of the said Section, it shows that, where an assessee has presented an appeal under section 246 [or Section 246A] the Assessing Officer may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal.

15. Two things are to be noted in the said sub-section (6) i.e., the assessing officer may use his discretion, that too, subject to certain conditions as he may think fit, in the circumstances of the case.

16. Here in the case in hand, the assessing officer since can use his discretion to pass any order, of course by imposing certain conditions in the circumstances of the case, if we look at the impugned order, the assessing officer has stated three reasons under which a blanket stay can be given without imposing any condition. But, the petitioner's case does not fall in any such category.

17. Moreover, the assessing authority has quoted the Department's Instruction No.1914 dated 29.02.2016, where



originally it was a demand of 50% and subsequently a demand of 20% was imposed as condition precedent for getting stay under Section 220 (6).

18. Here in the case in hand, the minimum requirement of 20% ought to have been paid by the petitioner, which alone has been quoted by the assessing authority in the impugned order.

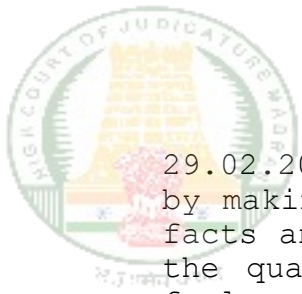
19. If at all any quasi-judicial authority is vested with the power to use his discretion, that too on conditions to be imposed in the circumstances of the case, it cannot be stated that, a hard and fast rule for such kind of discretion must be exercised in a particular fashion or manner, wherein a constant order has to be passed in each and every case.

20. The discretion to be exercised by the assessing authority depends upon the circumstances of each and every case. This has also been specifically made clear in Section 220(6) of the Act. Here in the case in hand, even though it was submitted by the learned counsel for the petitioner that, the grounds urged by the petitioner/assessee have not been considered in proper perspective in the impugned order, this Court feels that, since it is only an interim arrangement during the pendency of the appeal, where alone the entire issue ie., the root of the matter can be gone into by the appellate authority, therefore, during the interregnum, ie., during the pendency of the appeal, what best interim arrangement can be made alone has been stated under Section 220(6) of the Act.

21. In this context, the judgment of the Hon'ble Supreme Court referred to herein above ie., (2018) 18 SCC 447 (Principal Commissioner of Income Tax -Vs- LG Electronics India Private Limited) has been relied upon by the learned Judge in the said order in Queen Agencies case cited supra and the relevant portion at Para 12 has also been quoted, where the learned Judge has stated that definite 20% need not be imposed in each and every case, even a lesser percentage can be imposed while passing an order under Section 220(6) of the Act.

22. If we take the said proposition as culled down by the learned Judge from the decision of the Hon'ble Supreme Court, this Court feels that, if at all the petitioner is having any grievance, that may be only to a limited extent to state that, 20% as has been sought for through the impugned order may be reduced to a lesser one. If it is a lesser one, we cannot once again remand the matter back to the respondent i.e., the assessing authority to use his discretion to fix a lesser percentage of the demanded amount to be paid by the petitioner/assessee.

23. In this context, since the demand under the assessment which is in question before the appellate authority is Rs.12,86,72,780/-, which is comparatively a huge sum, instead of 20% demand by citing the Department Instruction No.1914 dated



29.02.2016, the assessing authority could have passed an order by making a demand of some lesser percentage. Considering the facts and circumstances of the case and also taking into account the quantum of demand made as quoted herein above, this Court feels that, instead of remanding the matter back to the respondent for re-consideration, a direction can be given to the petitioner/assessee to make a payment of at least 15% of the demand and on that condition, the petitioner would be entitled to get a stay of the assessment order which is under appeal before the appellate authority. If such a direction is given as an interim arrangement, this Court feels that, the ends of justice would be met.

24. Therefore, for all these reasons stated above, this Court is inclined to dispose of this writ petition with the following order.

- That the impugned order is modified to the effect that, instead of 20%, the petitioner/assessee shall pay 15% of the demand ie., Rs.12,86,72,780/- within a period of four weeks from the date of receipt of a copy of this order.
- On this condition, there shall be an order of stay of the assessment order till the disposal of the appeal filed before the second respondent.
- It is made clear that, within four weeks time if the payment of 15% of the demand as directed above has not been paid or complied with by the petitioner/assessee, the order of stay shall stand automatically vacated without any further reference to this Court.

25. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KST



To

1.The Deputy Commissioner of Income Tax
Corporate Circle 1(1), Chennai
Room No.611, Wanaparthi Block
VI Floor, No.121, Mahatma Gandhi Road
Nungambakkam, Chennai - 600 034.

2.Commissioner of Income Tax (Appeals)
National Faceless Appeal Centre
Delhi.

+1 cc to M/s.Hema Muralikrishnan, Advocate Sr.NO. 9327

W.P.No.2232 of 2022

PMK(CO)
A.SK(17/03/2022)