



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.07.2022

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.17317 and 17321 of 2022
and WMP Nos.16656 and 16657 of 2022

M/s. Ultra Tech Cement Limited
(Represented by its Assistant Manager (Commercial),
Chitteri Village
Arakkonam Taluk

... Petitioner in both W.P.s

Vs

1. The State Tax Officer,
Arakkonam.
2. The Appellate Deputy Commissioner (CT)
Commercial Taxes Building,
Vellore.

... Respondent in both W.P.s

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the 2nd respondent herein, in his proceedings in S.P.Nos.5 and 4/2021, both dated 02.06.2022 and quash the same, while directing the 2nd



respondent to re-dispose the stay extension petitions dated 09.05.2022, filed by the petitioner on 30.05.2022 before the 2nd respondent herein, and arising out of A.P.Nos.34 and 35/2021 for the assessment years CST 2004-05 and 2005-06.

In both W.Ps.
For Petitioner : Mr.N.Prasad

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

COMMON ORDER

Mr.V.Prashanth Kiran, learned Government Advocate accepts notice for the respondents and is armed with instructions to proceed with the matter finally even at this juncture. Hence, by consent of both learned counsel, these Writ Petitions are disposed even at the stage of admission.

2. The petitioner had challenged orders of assessment dated 14.07.2021 passed under the provisions of the Central Sales Tax Act, 1956 (in short 'CST Act') for the assessment years 2004-05 and 2005-06 before the first appellate authority, arrayed as R2. Pending appeals, the petitioner had sought stay of the impugned demands that arise under orders of assessment dated 14.07.2021.



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3. Both the parties, i.e., the authorized representative of the petitioner as well as the learned Departmental representative were heard in detail. Upon consideration of the rival contentions, an order of stay was passed on 12.10.2021 directing the petitioner to remit a further 25% of the disputed tax on or before 12.11.2021 and to furnish a bank guarantee or adequate security for the balance demand on or before the same date. The bank guarantee/security shall be kept alive for a period of 6 months, i.e., upto 12.04.2022.

4. Admittedly, the petitioner has complied with the aforesaid order. The appeals were thereafter taken up for hearing and the petitioner commenced its submissions in the appeals on 08.04.2022. Detailed submissions of the petitioner were heard and the matter was part heard and adjourned to 10.05.2022 when the argument of the petitioner was continued and completed.

5. The matter was adjourned for reply by the Departmental representative to 30.06.2022. Since the stay granted was in force until 12.04.2022, the petitioner sought extension of stay, since the provisions of Section 51(4) of the Tamil Nadu Value Added Tax Act, 2006 (in short



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‘TNVAT Act’) in terms of which CST assessments are framed, limit the stay to a period of six months only.

6. On 03.06.2022, the petitioner was in receipt of the impugned order rejecting the request for extension of stay on the ground that there is no provision under the TNVAT Act for considering such extension. Assailing which, the present Writ Petitions have been filed.

7. This conclusion of the authority is contrary to principles to be borne in mind in the disposal of interim petitions. The provisions of Section 51(4) state that, notwithstanding the preferring of the appeal under sub-Section (1) of Section 51, tax shall be paid in accordance with the order of assessment, as against which appeal is preferred.

8. The first proviso states that the appellate authority may, in his discretion, issue such directions as he thinks fit in regard to the payment of tax before disposal of the appeal subject to the appellant furnishing sufficient security to his satisfaction in the form and manner as he may stipulate.

9. The appellate authority has, in this case, invoked the discretion that is provided for under the first proviso. The second proviso states that *‘the*



directions given under the first proviso shall stand vacated, if no order is passed under sub-section (3) within a period of one hundred and eighty days of the issue of order under the said proviso’.

10. Thus, in a situation where the hearing of the appeal exceeds the period of 180 days from date of grant of stay, then the stay granted stands automatically vacated. The purpose of insertion of the second proviso is to ensure speedy disposal of appeals, since where interim protection is once obtained there is a tendency to stretch the benefit inordinately with the appeals stagnating inordinately. This causes accumulation of the substantial arrears of tax and penalty demands. It is to protect against such a situation that the second proviso has been inserted.

11. In my considered view, the rigour of the second proviso would not be applicable to a case such as the present one, where the petitioner has co-operated in full in the disposal of the appeals and there is admittedly no delay on its part or any attempt to protract the appeal proceedings.

12. An identical situation arose in the context of the Central Excise Act, 1944 (in short ‘CE Act’). Section 35C of the CE Act provides for a similar situation as set out under Section 51(4) of the TNVAT Act and the



two provisos thereunder.

13. A challenge identical to that in the present case travelled to the Hon'ble Supreme Court in the case of *Commissioner of Cus.&C.EX., Ahmedabad V. Kumar Cotton Mills Pvt. Ltd.* (2005 (180) ELT 434), wherein the Hon'ble Supreme Court after extracting the relevant statutory provisions, states as follows:

3. The provision has clearly been made for the purpose of curbing the dilatory tactics of those Assesseees who, having got an interim order in their favour, seek to continue the interim order by delaying the disposal of the proceedings. Thus, depriving the revenue not only of the benefit of the assessed value but also a decision on points which may have impact on other pending matters.

4. The Tribunal which was then known as Customs, Excise Gold (Control) Appellate Tribunal (CEGAT) came to the conclusion that the amendment did not affect stay orders which were passed prior to the date of coming into force of the amendment and also held that the amendment did not in any way curtail the powers of the Tribunal to grant stay exceeding six months.

5. During the pendency of the appeal before this Court, the matter was referred to a Larger Bench of the Tribunal. The Larger Bench has by its decision reported in MANU/CE/0401/2004 : 2004 (169) ELT 267 : 2004 (115) ECR 112 (T-LB) upheld the view impugned in this case. The decision of the Larger Bench has not been challenged by the Department being of the view that repeated special leave



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within a period of three (3) months from today, subject to the petitioner extending the validity of the bank guarantee for an another period of three (3) months.

16. These Writ Petitions stand allowed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

08.07.2022

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Index : Yes

Speaking Order

Note: Registry is directed to issue this order on or before 12.07.2022.

To

1. The State Tax Officer,
Arakkonam.
2. The Appellate Deputy Commissioner (CT)
Commercial Taxes Building,
Vellore.



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Dr.ANITA SUMANTH, J.

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