
**Luminous Power Technologies Pvt. Ltd. Vs The Appellate Deputy
Commissioner(C.T.) and Others**

Writ Petition Nos. 6044 to 6046 of 2015 and M.P. Nos. 1 to 1 of 2015 (3 Mps)

Court: Madras High Court

Date of Decision: March 5, 2015

Acts Referred:

Tamil Nadu Value Added Tax Act, 2006 - Section 52(4)

Hon'ble Judges: S. Vaidyanathan, J.

Bench: Single Bench

Advocate: Joseph Prabakar, for the Appellant; V. Haribabu, Addl. Govt. Pleader (Taxes),
Advocates for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Vaidyanathan, J.

The Writ Petitioner has come forward with the aforesaid prayer, challenging the order of the 1st respondent dated

29.01.2015 and for a direction to the first respondent to hear and dispose of Appeals without insisting on deposit and Bank Guarantee.

2. Heard both sides.

3. The petitioner company is an assessee on the file of the 2nd respondent and dealing with Long Backup Uninterrupted Power Supply (LB-UPS)

and on its sale during the relevant year, the petitioner paid tax at 4% under sub-entry 27 in Entry 68 of Part-B of First Schedule of Tamil Nadu

Value Added Tax Act, 2006 (in short TNVAT Act, 2006) According to the petitioner, the first respondent assessed the sales turnover of LB-

UUPS at 12.5%, however it is liable to tax at 4% or 5% under sub-entry 27 in Part B of First Schedule, as the issue has already settled by the

Supreme Court in SLP(Civil)/CC.No. 15021/2010 dated 15.02.2010 Goyal Motor Parts Vs. State of Punjab and Another, .
Aggrieved by the

order of the second respondent-original authority, the petitioner preferred appeal before the first respondent-appellate authority after complying

with the condition of payment of admitted tax and 25% disputed tax and praying for stay of balance amount of tax. The first respondent heard the

matter and passed the impugned order dated 29.01.2015, wherein, the petitioner was directed to pay another 25% of the disputed tax and file

bank guarantee for the balance of tax on or before 28.02.2015 for the assessment years 2009-10, 2010-11 and 2011-12. Aggrieved by the said

order, the petitioner has come forward with this petition.

4. Proviso to Section 52(4) of the TNVAT Act, 2006 reads as follows:-

(4) Notwithstanding that an appeal has been preferred under sub-section (1), the tax shall be paid in accordance with the order of assessment

against which the appeal has been preferred :

Provided that the Appellate Deputy Commissioner may, in his discretion, give such directions as he thinks fit, in regard to the payment of the tax

before the disposal of the appeal, if the appellant furnishes sufficient security to his satisfaction, in such manner, as may be prescribed :

5. The pre-deposit of 25% is the condition precedent for filing appeal before the appellate authority and the same has been complied with by the

petitioner. The appellate authority, exercising his power under Clause (6) of Section 220 is indeed a discretionary one. However, it is one coupled

with a duty to be exercised judiciously and reasonably, based on relevant grounds. It should not be exercised arbitrarily or capriciously or based

on matters extraneous or irrelevant. However, in exercising his power, the Income-tax Officer should not act as a mere tax-gatherer but as a quasi-

judicial authority and consider the matter in all its facets, from the point of view of the assessee without at the same time sacrificing the interests of

the Revenue. Thus, it is left to the discretion of the appellate authority to grant or not to grant stay and also to impose conditions for grant of stay or

to completely waive the pre-deposit. In this case, the appellate authority has exercised his discretionary powers and directed the petitioner to pay

another 25% of the disputed tax and file bank guarantee for the balance of tax on or before 28.02.2015 for the assessment years 2009-10, 2010-

11 and 2011-12, which, in my opinion, cannot be said to be illegal in order to interfere with the same.

6. The learned counsel for the petitioner submitted that since 25% of the disputed tax as provided under the Act has been paid by the petitioner

while preferring appeal, the conditions stipulated for the grant of stay by the appellate authority will cause hardship to the petitioner.

7. I am not inclined to accept the submission made by the learned counsel for the petitioner. The powers granted to the appellate authority by the

Statute are wide and the same cannot be interfered with by this Court, unless it was exercised arbitrarily or capriciously. Further, it is a settled

principle of law that the writ Court is not certainly sitting in appeal over each and every order passed by the statutory authority. The task of the writ

Court to examine the decision-making process was found in the decision reported in State of Uttar Pradesh and Others Vs. Maharaja Dharmander

Prasad Singh and Others, . The writ Court is averse to interfere with the acts and actions of the statutory authorities unless those are beyond

jurisdiction or in excess of jurisdiction.

8. In the light of the above discussion and in view of the facts and circumstances, this Court is inclined to modify the order of the appellate authority

with regard to Bank Guarantee alone and that instead of petitioner furnishing bank guarantee for the balance of tax, Personal Bond shall be

furnished. As far as the other condition towards payment of 25% of the disputed tax, the petitioner shall deposit the same on or before 30th April

2015 since the time granted by the appellate authority has already expired and report such compliance to the first respondent.

9. The Writ Petitions are disposed of with the above direction. No costs. Connected MPs are closed.