

# THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 31.01.2013

+ **W.P.(C) 552/2013**

**MARUTI SUZUKI INDIA LTD**

**..... Petitioner**

versus

**ADDITIONAL COMM. OF INCOME TAX  
AND ANR**

**..... Respondent**

**Advocates who appeared in this case:**

For the Petitioner

:

Mr S Ganesh, Sr. Adv. with Mr S  
Sukumar, Mr Anand Sukumar and Mr Bhupesh  
Kumar Pathak, Advs.

For the Respondent

:

Mr Kamal Sawhney, sr. standing counsel  
with Mr Shashank Singh, Adv.

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE R.V.EASWAR**

**JUDGMENT**

**BADAR DURREZ AHMED, J (ORAL)**

**CM 1043/2013**

Exemption is allowed subject to all just exceptions.

The application is disposed of.

**W.P.(C) 552/2013 & CM 1042/2013 (stay)**

This writ petition is directed against the order dated 11.01.2013 passed by the Income Tax Appellate Tribunal in Stay No.310/Del/2012 in ITA No.6021/Del/2012 pertaining to the assessment year 2008-09.

2. The petitioner sought stay of demand of ₹373.68 crores. The assessing officer acceded to the request of the assessee only to this extent that no coercive measures would be taken in respect of ₹150.92 crores which according to the learned counsel for the petitioner was on the basis of covered issues. Mr Ganesh, the learned senior counsel appearing for the petitioner submitted that a sum of ₹166.77 crores, i.e., about 75% of the amount of ₹222.76 crores (i.e., ₹373.68 crores – ₹150.92 crores) have already been adjusted by the revenue as against refund due to the petitioner. He submitted that the petitioner had refund claims of ₹166.77 crores out of which an amount of ₹148 crores had admittedly been adjusted and the balance amount of 18.77 crores is under process. Mr Ganesh submitted that if the amount of ₹148 crores is already adjusted and the balance of ₹18.75 crores under process are taken into account then the remaining amount would be only ₹56 crores (approximately) (₹222.76 crores – ₹166.75 crores).

3. In the light of the above facts Mr Ganesh submitted that the Tribunal has virtually rejected the stay application of the petitioner in as much as it has directed that the assessee ought to pay a sum of ₹56 crores by 31.01.2013 and thereafter the assessee shall pay ₹10 crores per month by the last date of the month till the demand of ₹222.76 crores was completely paid out by way of adjustment or the instalment made by the assessee.

4. Mr Ganesh submitted that the Tribunal did not examine whether the petitioner had a prima facie case or not and by giving the directions mentioned above it has virtually rejected the stay application.

5. In respect of the assessment years 2005-06 and 2007-08, where similar issues have been raised, the Tribunal had required the petitioner to make a deposit of only ₹125 crores (including adjustment of refund) out of the total demand of ₹547.06 crores. In other words, the Tribunal had stayed the demand to the extent of approximately 78% by requiring the petitioner to deposit only about 22% of the demand. In contrast, in the present year i.e. the assessment year 2008-09 the total demand is of ₹373.68 crores out of which approximately an amount of ₹150 crores is on account of covered issues for which the assessing officer himself had ordered that no coercive measures for recovery of the same would be taken although he had made adjustment to the said amount. The balance amount would be ₹222.76 crores. A further sum of ₹166.75 crores is to be reduced on account of refunds, both granted and under process. We are thus left with an amount of ₹56 crores which is the very amount which the Tribunal has required the assessee to deposit by 31.1.2013.

6. It is thus the case of the petitioner that while in the previous year when similar issues were raised only 22% of the entire duty demanded was required to be deposited while the balance was stayed, in the present year the Tribunal has been unduly harsh on the petitioner by requiring it

to deposit/adjust 60% of the tax demanded which also includes a sum of ₹150 crores which pertain to covered issues.

7. Consequently, Mr Ganesh submitted that the Tribunal has virtually not granted any stay to the petitioner whereas in the previous year it had done so. He also raised the issue that the advertisement; marketing and publicity expenses (AMP) which were to be considered by the Transfer Pricing Officer was an issue in the previous year as also in the current year and he also referred to a decision of the Special Bench of the Tribunal where certain guidelines have been laid down and the matter has been remanded to the TPO to follow those guidelines. According to Mr Ganesh a similar route would probably have to be adopted in the present case also and if that were to be so the current demand would be reduced by a sum of about ₹100 crores and therefore according to him the petitioner would have actually overpaid.

8. The learned counsel for the revenue opposed the writ petition and supported the order passed by the Tribunal and submitted that the Tribunal has already granted a stay in so far as the amount of ₹150 crores is concerned with regard to the covered issues. He submitted that the Tribunal has modified the order of the assessing officer to the extent that

while the assessing officer had merely provided that no coercive measures for recovery be undertaken but the amounts could be recovered by way of adjusting refunds, the Tribunal on the other hand has directed that no such adjustment could be made as against the covered issues.

9. Since the Tribunal in the earlier years on the very same issue has conclusively indicated in the order dated 03.02.2012 that the petitioner had a prima facie case, we feel that the Tribunal in the present case ought to have also held accordingly. If that were to be the position, then the Tribunal ought not to have deviated from the practice adopted in the previous year by requiring the petitioner to make a deposit of the said sum of ₹56 crores in addition to the adjustment of ₹166 crores.

10. Mr Ganesh has also pointed out that the appeal is fixed for hearing on 05.02.2013 and that he undertakes not to take any adjournment in the matter and it is only a matter of few days before the issue would be decided by the Tribunal. Considering the aforesaid arguments we are of the view that the Tribunal's order cannot stand and therefore we direct that no further recoveries be made against the petitioner till the disposal of the appeal by the Tribunal. We make it clear that we have expressed

no opinion on the applicability of the order of the Special Bench (supra) to the petitioner's case on merits which is for the Tribunal to decide.

The writ petition stands disposed of.

**BADAR DURREZ AHMED, J**

**R.V.EASWAR, J**

**JANUARY 31, 2013**

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