IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P. No. 13461 of 2015
and
M.P. No. 1 of 2015

M/s.U.V. Constructions,
Rep. By its Partner .. Petitioner

-vs-

1. The Appellate Deputy Commissioner (CT) (East)
C.T. Building Annexe
3rd floor, Greams Road
Chennai.

2. The Assistant Commissioner (CT),
Nanganallur Assessment Circle,
Chennai. ... Respondents

PRAYER : This Writ Petition under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in his proceedings in SP. No.191 of 2015 in APV No.193 of 2015 and quash the impugned order dated 20.04.2015 and further direct the first respondent to grant an absolute stay of collection of the balance of disputed tax and for the entire disputed penalty in respect of the assessment year TIN 2013-2014 without imposing any further condition of furnishing of security in the form of immovable property or bank guarantee pending disposal of the appeal on his files and pass further orders.

For petitioner : Mr.P. Rajkumar

For Respondents : Mr.V. Haribabu,
Additional Government Pleader (T)

O R D E R

This writ petition has been filed by M/s.U.V. Constructions, represented by its Partner, challenging the impugned order dated 20.04.2015 in SP. No.191 of 2015 in APV No.193 of 2015 and for a further direction to the first respondent to grant an absolute stay of collection of the balance of disputed tax and for the entire disputed penalty in respect of the assessment year TIN 2013-2014 without imposing any further condition of furnishing of security in the form of immovable property or bank guarantee.

2. Learned counsel appearing for the petitioner would submit that the petitioner is a Civil Works Contractor and a building promoter and a registered dealer on the files of the second respondent, the Assistant Commissioner (CT), Nanganallur Assessment Circle, Chennai, under the provisions of the TN VAT Act. Whileso, during the Assessment year 2013-2014 he reported a total and taxable turnover of Rs. 72,60,621/- and paid the tax before the second respondent. Thereafter, the second respondent issued a notice dated 19.01.2015 alleging that the petitioner during the year 2013-2014 have reported abatement amount of Rs.99,98,335/- before the service tax department. Finally, the second respondent levied penalty under Section 22(5) of the TN VAT Act by the assessment order dated 03.03.2015. Even in the revision of assessment made, the levy of penalty is not automatic and the same can be levied only on the wilful non-disclosure of assessable turnover.

3. Adding further, he would submit that when the petitioner filed an appeal before the first respondent, along with the stay application, specifically mentioning that he has already paid 25% of the disputed tax amount of Rs.60,645/- and seeing stay for the balance of disputed tax of Rs.1,80,274/- and for the entire penalty of Rs.3,63,863/-, although the first respondent had passed an order of stay, had again directed for payment of another 25% of the disputed tax amounting to Rs.60,300/- and to furnish security in the form of bank guarantee or immovable property security for the balance of disputed tax of Rs.1,19,974/- and the entire penalty of Rs.3,63,863/-.

4. Challenging the second condition imposed against the petitioner, the learned counsel appearing for the petitioner would submit that the approach adopted by the first respondent clearly shows that he has failed to appreciate Section 24(2) of the TNGST Act and Section 42 of the TNVAT Act read with Section 9 of the CST Act. A joint reading of this provision clearly shows that there has been an automatic charge created on the assets of the petitioner and therefore, there is no necessity for a direction to

file security for the balance amount of taxes. That apart, at the time of filing an appeal, the petitioner has also deposited 25% of the disputed tax amount and again when the stay application has been taken up, the first respondent directed the payment of another 25% of the disputed tax amount. That amount was also paid. While so, the petitioner is not in a position to comply with the second condition of the stay order.

5. Adding further, he submitted that this Court in a similar occasion, while considering an identical circumstances, dealing with a similar impugned order, modified only the second condition to one of directing the petitioner to execute the personal bond instead of furnishing bank guarantee for the balance amount of tax and penalty.

6. Mr. V. Haribabu, learned Additional Government Pleader (Taxes) taking notice for the respondents and agreeing to the said submission, requested this Court to direct the petitioner to execute personal bonds to that effect, within a week's time.

7. In view of the fact that the petitioner had already paid 50% of the disputed tax amount and as this Court has already considered the similar prayer, following the similar order, this writ petition stands disposed of by confirming the first condition and replacing the second condition to one of directing the petitioner to execute a personal bond for the balance amount of tax and penalty, as there has been an automatic charge created in view of Section 24(2) of the TNGST Act and Section 42 of the TNVAT Act read with Section 9 of the CST Act. Therefore, the petitioner is directed to execute the personal bond within a period of ten days from the date of receipt of a copy of this order.

8. With this direction, the writ petition is disposed of. Consequently, the connected miscellaneous petition is closed. No order as to costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

avr

To

1. The Appellate Deputy
Commissioner (CT) (East)
C.T. Building Annexe
3rd floor, Greams Road
Chennai.

2. The Assistant Commissioner (CT),
Nanganallur Assessment Circle,
Chennai.

1 cc to Mr.P. Rajkumar, Advocate, Sr. 24593

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