

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.13526 to 13528 of 2015

And

M.P.Nos.1 to 1 of 2015

M/s.Arihant Foundations & Housing Ltd

Rep by its Managing Director

Chennai-10

... Petitioner in all the W.Ps.

Vs.

1.The Appellate Deputy Commissioner
(CT) (Central),

C.T.Building Annexe 3rd Floor,
Greams Road, Chennai - 600 006.

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

... Respondents in all the W.Ps.

Common Prayer:

Writ petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the first respondent in S.P.No.225/2015 in AP.VAT 269/2015, S.P.No.226/2015 in AP.VAT 270/2015 and S.P.No.227/2015 in AP.VAT 271/2015 respectively and quash the impugned orders dated 20.04.2015 and further direct the first respondent to grant an absolute stay of collection of the entire disputed penalty in respect of the assessment year TIN 2009-2010, TIN 2010-2011 and TIN 2011-2012 respectively, 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.

For Petitioner : Mr.P.Rajkumar

For Respondents: Mr.V.Haribabu

Additional Government Pleader (T)

COMMON ORDER

By consent of both the parties, these writ petitions are disposed of, at the stage of admission itself.

2. There are three writ petitions filed by the petitioner challenging only the conditional order directing the petitioner to pay the penalty of Rs.2,17,745/-, Rs.4,85,982/- and Rs.1,66,932/- respectively. The petitioner has come to this Court challenging the condition imposed against him to file valid security in the form of Bank Guarantee obtained from any Nationalised Banks executed in favour of the Assessing Authority on or before 19.05.2015, subject to the said compliance, there shall be a stay of payment of penalty of Rs.2,17,745/-, Rs.4,85,982/- and Rs.1,66,932/- respectively.

3. Heard the learned counsel appearing for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (T) who takes notice for the respondents.

4. The petitioner is a registered dealer and promoter of residential and commercial buildings on the file of the second respondent under the provisions of the TNVAT Act. The second respondent in the assessment orders dated 03.02.2015 passed for the assessment years 2009-2010, 2010-2011 and 2011-2012 respectively, reversed the ITC for the reason that the said ITC was not claimed within 90 days from the date of purchase or before the end of the assessment years 2009-2010, 2010-2011 and 2011-2012 respectively, whichever is later. Hence, the second respondent was of the view that the claim of ITC is time barred as per Section 19(11) of the TNVAT Act and on this view, levied penalty under Section 27(3) and 27(4) of the Act, under Section 27(3) and 27(4) of the Act and under Section 27(4) of the Act respectively.

5. The petitioner aggrieved by the orders filed appeals along with the stay petitions before the first respondent. In its affidavit filed in support of the stay petitions and also on the date of hearing the petitioner has mentioned that it had already paid the entire disputed tax and sought for grant of stay of the entire penalty of Rs.2,17,745/-, Rs.4,85,982/- and Rs.1,66,932/- respectively, but the first respondent without appreciating the fact that the petitioner has got prima facie case and ignoring the fact that he has paid the entire disputed tax, directed the petitioner to furnish security in the form of Bank Guarantee or immovable property for the entire penalty amount of Rs.2,17,745/-, Rs.4,85,982/- and Rs.1,66,932/- respectively.

6. This Court in lieu of furnishing Bank Guarantee, directs the petitioner to execute personal bond within a period of two weeks from the date of receipt of a copy of this order and with this slight modification, the writ petitions stand allowed. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

pri

To

1.The Appellate Deputy Commissioner (CT) (Central),
C.T.Building Annexe 3rd Floor,
Greens Road, Chennai - 600 006.

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

3. The Deputy Commissioner (CT) Kilpauk Assessment Circle Chennai.

+ 1 cc to Mr.P.Rajkumar, Advocate Sr.24592

W.P.Nos.13526 to
13528 of 2015
And
M.P.Nos.1 to
1 of 2015

JP (CO)
Eu 20.05.15



WEB COPY