IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.05.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.14773 of 2015
and
M.P.No.1 of 2015

Tvl.Thirumagal Medicals,
rep by its Proprietor J.Kannan .. Petitioner

Versus

1. The Appellate Deputy Commissioner
   (Commercial Tax)
   Cuddalore 607 001

2. The Deputy Commercial Tax Officer,
   Chidambaram-II Assessment Circle,
   Chidambaram .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarifed Mandamus to call for the records relating to the proceedings of the 1st respondent in S.P.No.65 of 2015 in A.P.No.145 of 2015 dated 17.04.2015, to quash the same being illegal, invalid and against the law and consequently direct the 1st respondent to entertain personal bond as security in lieu of Bank Guarantee till the disposal of the appeal pending before the 1st respondent.

For Petitioner : Mr.M. Rajasekhar

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader(T)

O R D E R

The petitioner has filed the writ petition for issuance of writ certiorarified mandamus to call for the records relating to the proceedings of the 1st respondent in S.P.No.65 of 2015 in A.P.No.145 of 2015 dated 17.04.2015, to quash the same being illegal, invalid and against the law and consequently direct the 2nd respondent to entertain personal bond as security in lieu of Bank Guarantee till the disposal of the appeal pending before the 1st respondent.

2. By consent of both parties, the writ petition is taken up for disposal at the time of admission itself.

3.When the matter is taken up for consideration, the learned counsel for the petitioner submitted that in an indentical matter, this Court has permitted the petitioner therein to furnish a personal bond for the penalty in lieu of Bank Guarantee. He has also produced the copy of the order, dated 03.02.2015, passed in W.P.No.2464 of 2015. On perusal of the said judgment, it is seen that the learned Judge, by relying upon the order passed in W.P.No.30301 of 2012 (M/s.R.A & Co., rep by its Partner vs. The Appellate Deputy Commissioner (CT) VI (FAC) and another) dated 09.11.2012, permitted the petitioner to furnish personal bond for the penalty in lieu of Bank Guarantee. The relevant portion of the said judgment is as follows:

> 4. The petitioner relies on the decision of this Court, dated 09.11.2012 made in W.P.No.30301 of 2012 (M/s.R.A & Co., rep by its Partner vs.The Appellate Deputy Commissioner (CT) VI (FAC) and another) in which, in para 5, an earlier decision of this Court made in W.P.(MD) No.10567 of 2006 dated 27.11.2006 (M/s.Raja Ceramics represented by its Partner M.A.Nazimal Gani, 720 East Veli Street, Madurai Vs.The Appellate Assistant Commissioner (CT) Madurai (South) was cited. Para 4 of the above decision reads as follows:
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> "4. In a number of similar matters, this Court modified the conditions. Considering the facts and circumstance of the case, the submission made on either side and keeping in view the fact that an automatic charge is created under Section 24(2) of the Tamil Nadu General Sales Tax Act on the properties of the defaulting assessee, the following order is passed.
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> > "The condition imposed in paragraph 6 of the order of the first respondent to the effect that the petitioner should furnish adequate security on or before 17.11.2006 is modified and the petitioner is directed to execute a personal bond for the balance of tax and penalty amounting to Rs.1,79,876/- (Rupees one lakh seventh nine thousand eight hundred and seventy six only) within a period of fifteen days from today, failing which, this order shall stand vacated."

4. By following the said order, this Court is constrained to pass the following order:

> The petitioner shall furnish a personal bond for the penalty in lieu of Bank Guarantee within a period of fifteen days from the date of receipt of a copy of this order, failing which, this order will not ensure to the benefit of the petitioner.

5. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Vacation Officer

/true copy/

Sub Asst. Registrar

rrg/ds

To

1. The Appellate Deputy Commissioner
(Commercial Tax)
Cuddalore 607 001

2. The Deputy Commercial Tax Officer,
Chidambaram-II Assessment Circle,
Chidambaram

1 cc to Special Government Pleader, (Taxes), Sr. 25290

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