IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.16281 of 2015

M/s Mahaluxmi Edible Oils Pvt.Ltd.,
rep.by its Managing Director S.Srinivasan
No.18/19, Vivekanand Nagar
First Street, VRN Complex
Bye Pass Road
Gummidipoondi 601 201 .. Petitioner

-vs-

1. The Commercial Tax Officer
Gummidipoondi Assessment Circle
No.38, GNT Road, II Floor
Gummidipoondi 601 201

2. The Appellate Deputy Commissioner (CT)
III Floor, Commercial Taxes
Annexe Building
Greams Road
Chennai 600 006 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records on the files of the second respondent in S.P.No.100 of 2015 in A.P.(CST)No.29 of 2015 dated 12.5.2015 and quash the same as illegal and direct the second respondent to grant absolute stay for the balance disputed tax amount without insisting upon furnishing of bank guarantee till the disposal of the appeal in A.P.(CST) No.29 of 2015.

For Petitioner :: Ms.C.Rekha Kumari for
Mr.T.Pramod Kumar Chopda

For Respondents :: Mr.Manoharan Sundaram
Additional Government Pleader

ORDER

This writ petition has been filed by M/s Mahaluxmi Edible Oils Private Limted represented by its Managing Director, challenging the impugned order passed by the second respondent in S.P.No.100 of 2015 in A.P.(CST) No.29 of 2015 dated 12.5.2015 in respect of the assessment year 2012-13, wherein the second respondent directed the petitioner to pay another 25% of the disputed tax and again directed the petitioner to furnish bank guarantee to the satisfaction of the assessing officer for the balance of tax on or before 11.6.2015 for the grant of stay.

2. Challenging the second condition imposed against the petitioner, the learned counsel appearing for the petitioner submitted that the approach adopted by the second respondent clearly shows that he has failed to appreciate Section 24(2) of the Tamil Nadu General Sales Tax Act and Section 42 of the Tamil Nadu Value Added Tax Act read with Section 9 of the Central Sales Tax Act. A joint reading of these provisions would clearly show 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 bank guarantee for the balance amount of tax. That apart, at the time of filing an appeal, the petitioner had already deposited 25% of the disputed tax and again when the stay application was taken up, the second respondent again directed the payment of another 25% of the disputed tax, which was also paid by the petitioner on 27.5.2015. While so, the petitioner is not in a position to file bank guarantee for the balance amount of tax.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader taking notice on behalf of the respondents.

4. Admittedly, in the present case, the petitioner had paid 50% of the disputed tax. This Court, in identical circumstances, has been directing the similarly placed persons to execute only personal bond instead of bank guarantee for the balance amount of tax.

5. In view of the above, this writ petition is disposed of by modifying only the second condition to one of directing the petitioner to execute personal bond for the balance amount of tax within a period of two weeks from the date of receipt of a copy of this order, as there has been an automatic charge created in view of Section 24(2) of the Tamil Nadu General Sales Tax Act and Section 42 of the Tamil Nadu Value Added Tax Act read with Section 9 of the Central Sales Tax Act, till the disposal of the appeal. Consequently, M.P.No.1 of 2015 is closed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

ss

To

1. The Commercial Tax Officer
   Gummidipoondi Assessment Circle
   No.38, GNT Road, II Floor
   Gummidipoondi 601 201

2. The Appellate Deputy Commissioner (CT)
   III Floor, Commercial Taxes
   Annexe Building
   Greams Road
   Chennai 600 006.

1 cc to Spl.Government Pleader.Sr.No.28148
1 cc to Mr. .T.Pramod Kumar Chopda, Advocate Sr.No.27920

W.P.No.16281 of 2015

sv-I(co)
pmk.22.6.2015