IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2015

Coram:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.19968 of 2015
and M.P.Nos.1 & 2 of 2015

M/s. Sri Pushpavalli Agencies [Petitioner]
Rep. by its Proprietor-G.Dhinakaran
No.5 South Street Tirukoilur
Villupuram District.

Vs

1 The Commercial Tax Officer
Tirukoilur Villupuram District.

2 The Appellate Deputy
Commissioner (CT)
Cuddalore-607001
Cuddalore District.

[Respondents]

PRAYER: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records on the file of the 2nd Respondent in his proceedings in S.P. No.46/2015 in A.P. No.118/2015 dated 15.04.2015 and quash the same in so far as it directs the petitioner to furnish security for the balance of disputed taxes and penalty due for the assessment year 2013-14 under the TNVAT Act 2006.

For Petitioner : Ms.R.Hemalatha

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

O R D E R

With the consent of both sides, the Writ Petition itself is taken up for final disposal. Mr.S.Kanmani Annamalai, learned Government Advocate (Taxes), takes notice for the respondents.

2. The relevant assessment year is 2013-2014. The Assessing Officer, the above mentioned first respondent, has completed the assessment. Aggrieved by that, the petitioner has preferred appeal

before the Appellate Authority, the above mentioned second respondent. Along with the appeal, the petitioner has also filed the stay petition. The second respondent has passed the order in stay petition in S.P.No.46 of 2015 with the following conditions:-

> "S.P.No.46/2015
>
> 4. This stay petition case was heard and based on the merits of the case stay is granted fulfilling the conditions given below. The 25% of disputed tax is already paid. The balance 25% of the tax of Rs.1,21,818/- should be paid and the rest of the tax (50%) of Rs.2,43,555/- and penalty of Rs.7,30,910/- should be filed as Bank Guarantee.
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> The petitioner is directed to pay a sum of Rs.1,21,818/- being 25% of the disputed tax before the learned Assessing Authority on or before 15th May 2015. With regard to the balance of Tax of Rs.2,43,555/- and penalty of Rs.73,910/- a total sum of Rs.9,74,465/-, the petitioner is directed to file valid security in the form of Bank Guarantee obtained from any one of the Nationalized Bank executed in favour of the Assessing Authority concerned on or before 15th May 2015. Thus, there will be a stay with regard t the collection of balance amount of Rs.9,74,465/- till the disposal of the appeal or till 15th October 2015 whichever is earlier. The Bank Guarantee/Security Bond of immovable property shall be kept above shall be encumbered till the disposal of the appeal.
>
> The Bank Guarantee shall be for a period of six months and the duplicate copy of Bank Guarantee attested by the Commercial Tax Officer, Thirukoilur shall be filed in this office for awarenes and file purpose.

3. In respect of the above conditions, the learned Counsel for the petitioner fairly stated that the petitioner had already complied with the direction with regard to the payment of another 25% of the disputed tax, but, in so far as the condition of filing the bank guarantee for the remaining balance of tax is concerned, he stated that the said condition is onerous and due to financial constraints, the petitioner could not comply with the said direction of the Appellate Authority. The petitioner has already paid 50% of the disputed taxes.

4. Section 42(2) clearly says that any tax assessed on or has become payable or any other amount due under this Act from a dealer or person shall be subject to the claim of the Government in respect of land revenue. As the above section provides an automatic charge as security towards any arrears of tax, in view of the fact that the petitioner has accepted the direction to pay 25% of the disputed tax and paid the same, the further direction to file bank guarantee as security for the balance of tax and penalty needs to be modified.

5. Therefore, in view of the above, this Court is inclined to modify the second condition of the appellate authority. Accordingly, in lieu of executing the Bank Guarantee, this Court directs the petitioner to execute personal bond for the remaining balance of Rs.9,74,465/- (tax and penalty) within a period of two weeks from the date of receipt of a copy of this order.

With the above observations, this Writ Petition is disposed of. No costs. Connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1 The Appellate Deputy Commissioner (CT)
CT Buildings, Cuddalore

2. The Commercial Tax Officer
Tirukoilur, Villupuram District

1 cc to Mr.R. Hemalatha, Advocate, Sr. 33723
1 cc to Special Government Pleader, (Taxes), Sr. 33958

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SV (CO)
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