IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2015

Coram:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.19978 of 2015
and M.P.No.1 of 2015

Senthil Aggregates & Cement Products [Petitioner]
Represented by its Managing Partner
A.Senthilkumar
No.107-A Senguptha Street
Ramnagar Coimbatore.

Vs

1 The Assistant Commissioner(CT)
Ramnagar Assessment Circle Coimbatore.

2 The Appellate Deputy
Commissioner (CT) (Main) FAC Coimbatore.

[Respondents]

PRAYER: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified mandamus to call for the records on the files of the Second Respondent herein in SP No.02/2015 in Vat Ap No.58/2015 dated 02.06.2015 and quash the same while directing the Petitioner to furnish personal bond for the amount of Rs.6,65,085/- (2012-13) and Penalty of Rs.6,20,745/-

For Petitioner : Mr.N.Inbarajan

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 2012-2013. 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.02 of 2015 with the following conditions:-

> "S.P.No.01/2015
>
> (i) The petitioner is directed remit Rs.3,32,543/- before the Assessing Authority on or before 02.07.2015.
>
> (ii) The petitioner shall file sufficient and legal acceptable security either in Form XIX or XIX-C (Indemnity Bond for mortgage of immovable property or Bank Guarantee) for the sum of Rs.665085/- being 50% of the tax due and for the full penalty of Rs.620745/- before the assessing authority, on or before 02.07.2015.".

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 Indemnity Bond for mortgage of immovable property or 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 Indemnity Bond for mortgage of immovable property or Bank Guarantee, this Court directs the petitioner to execute personal bond for the remaining balance of Rs.12,85,830/- (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 petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1 The Assistant Commissioner(CT)
Ramnagar Assessment Circle Coimbatore.

2 The Appellate Deputy
Commissioner (CT) (Main) FAC Coimbatore

W.P.No.19978 of 2015

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