IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2015

CORAM

THE HON'BLE MR. JUSTICE T.RAJA

W.P.NO.21212 OF 2015

AND

M.P.NOS.1 AND 2 OF 2015

M/s.Siddhanath Hall Marking & Assaying Centre rep. by its Partner V.Amitkumar .. Petitioner

Vs.

1. The Assistant Commissioner (CT), Vellore (South), Vellore, Vellore District.

2. The Appellate Deputy Commissioner (CT), Commercial Taxes Building, Vellore, Vellore District. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records on the file of the second respondent in his proceedings in S.P.No.182/2015 in APV 318/2015 dated 29.06.2015 and quash the same in so far as it directs the petitioner to furnish security for the balance of disputed penalty due for the assessment year 2014-15 under the TNVAT Act, 2006.

For Petitioner .. Mr.S.Rajasekar

For Respondents .. Mr.Manoharan Sundaram, Addl. Govt. Pleader (T)

ORDER

This writ petition has been filed by M/s.Siddhanath Hall Marking and Assaying Centre represented by its Partner V.Amithkumar, challenging the impugned order passed by the Appellate Deputy Commissioner (CT), Vellore in S.P.No.182/2015 in APV 318/2015 dated 29.06.2015, directing the petitioner to furnish bank guarantee for a period of six months i.e. upto 28.12.2015.

2.The grievance of the petitioner is that the Appellate Deputy Commissioner (CT) viz., the second respondent herein, while entertaining his appeal, has passed the interim order, making it clear that there is no disputed tax liability, however, with regard to the penalty amount of Rs.5,65,500/-, directed the petitioner to furnish a bank guarantee for an amount of Rs.5,65,500/- on or before 28.07.2015. Learned counsel for the petitioner submitted that in similar cases, where a direction is given to an assessee for furnishing bank guarantee for 50% of the disputed tax, this Court modified the said direction to one of execution of personal bond. But, in the present case, admittedly, there is no disputed tax liability. Therefore, the learned counsel submits that instead of furnishing bank guarantee for the penalty amount of Rs.5,65,500/-, a direction may be given to the petitioner to execute a personal bond.

3.This Court also finds merit in the submission of the learned counsel for the petitioner for the reason that admittedly, in the present case, the petitioner has filed an appeal before the second respondent and the same is pending for consideration. While entertaining the appeal, the second respondent has made it clear that there is no disputed tax liability, however, with regard to penalty of Rs.5,65,500/-, pending appeal, directed the petitioner to furnish bank guarantee for the aforesaid amount. As there is an automatic charge over the property as per Section 42(2) of the TNVAT Act, 2006, this Court hereby directs the petitioner to execute the personal bond in lieu of furnishing bank guarantee for the penalty amount of Rs.5,65,500/-, within a period of one week from the date of receipt of a copy of this order. It is made clear that if personal bond is not executed within the time stipulated, the impugned order will automatically stand revived.

4.With the above modification, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

To

1. The Assistant Commissioner (CT),
   Vellore (South), Vellore,
   Vellore District.

2. The Appellate Deputy Commissioner (CT),
   Commercial Taxes Building,
   Vellore, Vellore District.

+1cc to Mrs. R. Hemalatha, Advocate SR 35786
+1cc to Special Government Pleader SR 35818

W.P.No.21212 of 2015

SCD (CO)
RS 11.08.2015