IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.02.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.2313 of 2015

and M.P.No.1 of 2015

N/s.A.M.Steel Traders
rep.by its Proprietor Mohammed Ismail
54, Sambuclose St., Chennai 1 ... Petitioner

Vs

1. The Assistant Commissioner (CT)
   Harbour III Assessment Circle,
   Now redesignated as Broadway Assessment Circle,
   Chennai 600 001.

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

Prayer.: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the second respondent in S.P.No.51/2014 in A.P.No.103/14 dated 02.01.2015 and quash the same as illegal and direct the second respondent to grant absolute stay for the balance disputed tax amount without insist upon furnishing of bank guarantee till the disposal of the appeal in A.P.No.103/2014.

For Petitioner : M/s.T.Pramodkumar Chopda

For Respondents : Mr.A.R.Jayapratap
Government Advocate (Tax)

O R D E R

The petitioner has filed this Writ Petition for issuance of writ of certiorarified mandamus, to call for the records on the file of the second respondent in S.P.No.51/2014 in A.P.No.104/14 dated 02.02.2015 and quash the same and direct the second respondent to grant absolute stay for the balance disputed tax amount without insist upon furnishing of bank guarantee till the disposal of the appeal in A.P.No.103/2014.

2. With consent of both the parties, this Writ Petition is taken up for hearing at the stage of admission itself.

3. Petitioner seeks modification of the order passed by the first respondent Appellate Authority in the stay petition stating that 25% of the disputed tax amount has been paid and seeks modification in so far as the balance amount of tax for which bank guarantee was directed to be produced.

4. After payment of the 25% of the disputed tax amount, the petitioner is before this Court seeking modification of the order in so far as imposing the condition to submit bank guarantee stating that the condition is onerous and is causing serious prejudice to the petitioner company.

5. 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:

> "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 seventy nine thousand eight hundred and seventy six only) within a period of fifteen days from today, failing which, this order shall stand vacated."

6. In view of the above decision of this Court, the petitioner is directed to furnish a personal bond for the amount due towards the balance amount of tax within a period of six weeks from the date of receipt of a copy of this order, failing which, the order shall stand automatically vacated. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

kkd

To

1. The Assistant Commissioner (CT)
   Harbour III Assessment Circle,
   Now redesignated as Broadway Assessment Circle,
   Chennai 600 001.

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

+1cc to Mr.T.Pramod Kumar, Advocate, S.R.No.5043
+1cc to the Special Government Pleader, S.R.No.5272

W.P.No.2313 of 2015 and M.P.No.1 of 2015

MG(CO)
CA(04/03/2015)