IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.25817 of 2015
and M.P.No.1 of 2015

S. Raja
[Petitioner]
Proprietor of M/s. C. Zone
No. 462 Gandhi Road
Kanchipuram - 632 501. ..Petitioner

Vs

1 The Assistant Commissioner(CT)
Kanchipuram Assessment Circle
Kanchipuram - 631 501

2 The Appellate Deputy
Commissioner (CT)
Chennai (South) Chennai - 600 006 ..Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for records of S.P.No. 93 of 2015 in A.P.No.135 of 2015-VAT on the file of the 2nd Respondent and quash the conditions in interim stay order dated 06-07-2015 Condition No.(I). The Petitioner is directed to pay a further amount of Rs.1 25 635/- being another 25% of the Tax before the learned Assessing Authority on or before 05-08-2015 and Condition No.(ii) With regard to balance amount of Tax Rs. 2 52 135/- the petitioner is directed to file a valid security in form of Bank Guarantee obtained from any of the Nationalized Banks executed in favour of the Assessing Authority concerned in the prescribed manner in fulfilment of the conditions stipulated in Rule 14(15)read with proviso to Section 51(4) of the TNVAT Act, 2006 on or before 05.08.2015 (valid upto 6 month i.e, 05.01.2016), as it is illegal, arbitrary and in violation of Rule 14(15) of the Tamil Nadu Value Added Tax Rules, 2007 and without jurisdiction and Articles 14, 21 and 265 of the Indian Constitution.

For Petitioner : Mr.Kanchi G.V.Mathiazhagan

For Respondents : Mr.S.Manoharan Sundaram, AGP(T)

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes), who took notice for the respondents and with their consent, the main writ petition is taken up for disposal.

2. The petitioner has come forward with this writ petition challenging the order dated 06.07.2015 on the file of the 2nd respondent, imposing a condition that the petitioner should pay a further amount of Rs.1,25,635/- on or before 05.08.2015 being 25% of the tax and to furnish a bank guarantee for the balance tax amount, during the currency of appeal proceedings.

3. The petitioner filed an appeal before the 2nd respondent challenging the assessment order passed by the 1st respondent. The appeal was taken on file by the 2nd respondent along with stay petition filed by the petitioner. The appellate authority was pleased to grant an order of stay in the stay petition, directing the petitioner to pay another 25% of the disputed amount of tax before the Assessing Authority on or before 05.08.2015. The Appellate Authority also imposed a further condition directing the petitioner to furnish bank guarantee in respect of balance amount of tax in the stay petition. The said onerous condition is challenged in this writ petition.

4. The petitioner has paid 25% of the disputed tax for the assessment year at the time of filing the appeal. However, as directed by the Appellate authority, the petitioner has neither made payment of another 25% of the disputed amount nor furnished bank guarantee for the balance tax amount. The learned counsel for the petitioner seeks further time to comply with the 1st condition with regard to payment of 25% of the disputed amount and as far as furnishing of bank guarantee is concerned, according to the learned counsel, the same may be modified into one of personal bond.

5. This Court, in catena of decisions, directed the assessees to execute a personal bond in lieu of furnishing bank guarantee.

6. Therefore, the writ petition is disposed of with a direction to the petitioner to pay 25% of the disputed tax as directed by the appellate authority, within a period of two weeks from the date of receipt of a copy of this order and on such payment, the petitioner is directed to execute personal bond for the balance tax amount for the assessment years, in lieu of furnishing bank guarantee. On such

executing the personal bond, the order of stay granted by the 2nd respondent shall be in force till the disposal of the appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1 The Assistant Commissioner(CT)
Kanchipuram Assessment Circle
Kanchipuram - 631 501

2 The Appellate Deputy
Commissioner (CT)
Chennai (South) Chennai - 600 006.

+ 2 ccs to M/s. Kanchi G.V. Mathiazhagan, Advocate Sr.43881
+ 1 cc to Special Government Pleader SR.44309

W.P.No.25817 of 2015

KGK(CO)
Eu 02.09.15