IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.2994 and 2995 of 2015

Prakash Suppliers [Petitioner in both]
Rep by its Partner S.Elred Kumar
20, Alagesan Street Chennai 45

Vs

1 The Appellate Deputy Commissioner
(CT) East, 3rd Floor
Commercial Taxes Annexe Building
1 Greams Road Chennai 6

2 The Assistant Commissioner (CT)
Tambaram Assessment Circle
19A Sivashanmugham Salai
West Tambaram Chennai 45. [Respondents in both]

Petitions filed under Article 226 of the Constitution of India to issue a Writ of certiorari to call for the records of the 1st respondent in SP No.29/2014/East in APV No.254/2014 East and SP No.30/2014/East in APV No.257/2014 East respectively and quash the orders dated 9.1.2015 so far as the condition of furnishing of security for the balance of disputed tax in the form of bank guarantee is concerned pending disposal of the appeals.

For Petitioner : Mr.R.Kumar

For Respondents : Mr.Cibi Vishnu, AGP(T)

WEB COPY

C O M M O N O R D E R

Heard the learned counsel for the petitioner and the learned Government Advocate (Taxes) for the respondents.

2. The petitioner has come forward with these writ petitions challenging the orders dated 09.01.2015 on the file of Appellate Deputy Commissioner (Commercial Tax) (East)), Chennai, so far as the condition of furnishing of security for the balance of disputed tax in the form of bank guarantee is concerned pending disposal of the appeals.

https://hcservices.ecourts.gov.in/hcservices/

3. The petitioner filed appeals before the 1st respondent challenging the Assessment orders passed by the 2nd respondent in respect of the assessment years 2007-08 and 2009-10. The appeals were taken on file by the 1st respondent along with stay petitions filed by the petitioner. The appellate authority was pleased to grant an order of stay in both petitions, directing the petitioner to pay another 25% of the disputed amount of tax before the Assessing Authority. The Appellate Deputy Commissioner, imposed a further condition directing the petitioner to produce security with respect to the balance amount of tax in both the stay petitions. The said onerous condition is challenged in these writ petitions.

4. According to the learned Government Pleader that since the amount is huge, the authority has ordered only security and therefore, the impugned orders are correct.

5. It appears that the petitioner has already paid 25% of the tax at the time of filing of the appeals. The petitioner also deposited 25% of the disputed amount of tax pursuant to the direction given by the Appellate Deputy Commissioner. In addition to the deposit of 25%, the Appellate Deputy Commissioner, directed the petitioner to produce security in favour of the assessing officer concerned for the remaining amount of tax.

6. Considering the factual matrix, I am inclined to modify the said condition imposed by the Appellate Deputy Commissioner, (CT) (East) Chennai, the first respondent, in the light of the earlier pronouncement of this Court in W.P.(MD)No.20269 of 2013 dated 16.12.2013 by following the unreported judgment of the Division Bench of this Court in W.A.(MD)No.194 of 2005 dated 13.7.2006, wherein it has been held as follows:-

> 2. When the appellant preferred a statutory appeal before the first respondent, as a condition precedent for filing an appeal, the appellant deposited 25% of the tax assessed. It is stated that as per the interim orders of the first appellant, the appellant has also paid another 20% of the assessed tax which is under challenge before the first respondent.
>
> 3. In such circumstances, we feel that the interim order of stay granted by the first respondent can be directed to be continued subject to the appellant furnishing a personal bond for the remaining tax amount as well as penalty.
>
> 4. Subject to such modification, the writ appeal stands disposed of. The order of the learned single judge is also modified to the above extent. Such personal bond shall be furnished by the appellant

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed".

7. In the result, the impugned orders are modified and the petitioner is directed to pay further 10% out of the remaining 50% of the disputed tax in respect of each assessment years on or before 31.3.2014. Insofar as the remaining amount is concerned (i.e. 40% in each assessment years), the petitioner is permitted to execute a personal bond undertaking to pay the balance amount of disputed tax, if the petitioner fails to succeed in the appeals. The petitioner is directed to execute the personal bond on or before 10.4.2014 and in case of execution of such personal bond the order of stay granted by the 1st respondent would be in force, till the disposal of the statutory appeals. The appellate authority shall dispose the appeals as expeditiously as possible.

8. The writ petitions are disposed of with the above direction. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

rg

To

1 The Appellate Deputy Commissioner
(CT) East, 3rd Floor
Commercial Taxes Annexe Building
1 Greams Road Chennai 6

2 The Assistant Commissioner (CT)
Tambaram Assessment Circle
19A Sivashanmugham Salai
West Tambaram Chennai 45.

+2 CC to Mr.R.Kumar, Advocatre, Sr.No.7362, 6310.

+2 CC to Special Government Pleader, Sr.No.6467, 7588.

W.P.Nos.2994 and 2995 of 2015

KM(CO)
KP(24.02.2015)

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/