IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.31701 of 2015

Dennis Steels Pvt. Ltd., rep. by its
Director Sholly Dennis ... Petitioner

Vs

1. The Appellate Deputy Commissioner (CT),
   55, Bharathiar Salai, Fort Round Road,
   Vellore - 632 001.

2. The Commercial Tax Officer,
   Arakkonam Assessment Circle,
   Arakkonam, Vellore District. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari to call for the records of the first respondent in S.P.No.198/2015 in APV 625/2015 and quash the order dated 31.08.2015 so far as the condition of furnishing of security for the balance of disputed penalty in the form of bank guarantee is concerned pending disposal of the appeal.

For Petitioner : Mr.R.Kumar

For Respondents : Mr.V.Haribabu,
Additional Government Pleader (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 of the first respondent dated 31.08.2015, whereby the petitioner was directed to pay 25% of the disputed tax and furnish a bank guarantee for the balance amount.

3.The petitioner is a manufacturer of TMT bars and is filing monthly returns. By the assessment order dated 26.05.2015 for the assessment year 2013-2014, the second respondent levied tax at Rs.1,79,917/- and penalty at Rs.7,797/-. Aggrieved by the same, the petitioner preferred an appeal along with stay petition before the first respondent. The first respondent, by the impugned order dated 31.08.2015, granted stay on condition that the petitioner should pay further amount of Rs.44,979/- and furnish bank guarantee for the balance of tax and penalty at Rs.97,756/-. Aggrieved against the same, the petitioner has filed this writ petition.

4.Learned counsel for the petitioner would submit that at the time of filing appeal, the petitioner has paid 25% of the tax amount and once an order of assessment is passed, an automatic charge is created, as per Section 42(2) of the TVAT Act, which would safeguard the interest of the revenue. Therefore, the first respondent is not justified in demanding additional security.

5. This Court, in a catena of decisions, directed the assessees to execute a personal bond in lieu of furnishing bank guarantee only with regard to the remaining 50% of tax and penalty. Therefore, this writ petition is disposed of with a direction to the petitioner to pay 25% of the disputed tax as directed by the first respondent and to execute personal bond for the balance tax amount and penalty, in lieu of furnishing bank guarantee, within a period of two weeks from the date of receipt of a copy of this order. On such executing the personal bond, the order of stay granted by the first respondent shall be in force till the disposal of the appeal. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Appellate Deputy Commissioner (CT),
   55, Bharathiar Salai, Fort Round Road,
   Vellore - 632 001.

2. The Commercial Tax Officer,
   Arakkonam Assessment Circle,
   Arakkonam, Vellore District.

+1cc to Mr.R.Kumar, Advocate, S.R.No.54282
+1cc to the Special Government Pleader(Taxes), S.R.No.54892

W.P.No.31701 of 2015

KU(CO)
CA(19/10/2015)