IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.34458 of 2015

KLN Engineering Products Pvt.
Limited rep. by its Director
Nakul Shetty, Chennai .. Petitioner

Vs

1. The Appellate Deputy Commissioner (CT),
   North (FAC), C.T. Buildings Annexe
   3rd Floor, Greams Road,
   Chennai - 600 006.

2. The Commercial Tax Officer,
   Washermenpet Assessment Circle,
   No.20, Kummalamman Koil Street,
   Chennai - 600 081. .. 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.172/2015 in APC 48/2015 and quash the order dated 09.10.2015 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 appeal.

For Petitioner : Mr.R.Kumar

For Respondents : Mr.S.Kanmani Annamalai,
Addl. Govt. 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 09.10.2015, whereby the petitioner was directed to pay 50% of the disputed tax and furnish a bank guarantee for the balance tax amount.

3. The petitioner is a manufacturer of automobile components and a registered dealer on the file of the second respondent. The petitioner has been filing monthly returns through e filing. For the assessment year 2010-11, the second respondent, by proceedings dated 10.03.2015 and 27.03.2015, had levied taxes, disallowing the forms for CST. Hence the petitioner filed first appeal along with stay petition before the first respondent under Sections 51 and 52 of TNVAT Act, by remitting 25% of the tax amount. By order dated 10.09.2015, the first respondent granted stay on condition that the petitioner should pay 25% of the tax amount and file bank guarantee for the balance tax. Aggrieved by the same, the petitioner has filed a petition for modification and by order dated 09.10.2015, the first respondent modified the condition to the effect that the petitioner shall pay a further amount of Rs.1,68,299/- being 50% of the balance of tax and file bank guarantee for the balance amount. It is against this order, the present writ petition has been filed.

4. Learned counsel for the petitioner would submit that the petitioner had already paid 50% of the tax 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. Since the petitioner had already paid 50% of the tax, this writ petition is disposed of with a direction to the petitioner to execute personal bond for the balance tax amount, 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.
Mmi

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub-Assistant Registrar

To

1. The Appellate Deputy Commissioner (CT),
North (FAC), C.T. Buildings Annexe
3rd Floor, Greams Road,
Chennai - 600 006.

2. The Commercial Tax Officer,
   Washermenpet Assessment Circle,
   No.20, Kummalamman Koil Street,
   Chennai - 600 081.

+1 C.C. To MR.R.Kumar, Advocate in SR.NO.58730

+1 C.C. To Special Government Pleader (Taxes) in SR.NO.59069

GR(CO)
sd : 06/11/2015