IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.34549 of 2015
and
M.P.No.1 of 2015

M/s.Kaleesuwari Jewellery Pvt. Ltd.,
No.32, Narayanappan Street,
Old Washermenpet, Chennai - 15. ... Petitioner

Vs

1. The Appellate Deputy Commissioner (CT)
(FAC), North Division,
3rd Floor, Greams Road, Chennai - 6.

2. The Assistant Commissioner (CT),
Royapuram Assessment Circle,
Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for the records of the first respondent in S.P.No.201/15 in VAT A.P.210/15 dated 09.10.2015 and quash the same and further direct the first respondent to grant an absolute stay for the entire penalty amount without insisting upon furnishing of bank guarantee till the pending disposal of the appeal on the file of the first respondent.

For Petitioner : Ms.C.Rekha Kumari
For Respondents : Mr.S.Kanmani Annamalai,
Additional Government Pleader(T)

O R D E R

Seeking to quash the order of the first respondent dated 09.10.2015 and for a consequential direction to the first respondent to grant stay, without insisting upon furnishing of bank guarantee, the petitioner has filed the present writ petition.

2.The petitioner is an assessee on the file of the first respondent and regularly filing monthly returns. While so, the second respondent levied tax on certain purchase and sales turnover, without verification. Against the assessment order, the petitioner preferred an appeal along with stay petition before the first respondent and even before filing the appeal, the petitioner has paid the entire tax amount. By the order dated 09.10.2015, the first respondent granted interim stay on condition that the petitioner should furnish bank guarantee for penalty. Aggrieved by the same, the petitioner is before this Court.

3.Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

4.Learned counsel for the petitioner would submit that even before filing of the appeal, the petitioner has paid the entire 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 execute personal bond for the entire 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. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Appellate Deputy Commissioner (CT)
   (FAC), North Division,
   3rd Floor, Greams Road, Chennai - 6.

2. The Assistant Commissioner (CT),
   Royapuram Assessment Circle,
   Chennai.

+1cc to M/s.C.Rekha Kumari, Advocate, S.R.No.59753
+1cc to the Special Government Pleader(Taxes), S.R.No.59070

W.P.No.34549 of 2015

SVI(CO)
CA(05/11/2015)