IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.38911 to 38913 of 2015

and

M.P.Nos.1 & 2 of 2015 (5 Nos)

M/s.Arihant Foundations & Housing Ltd.,
No.271 Poonamallee High Road
Chennai-10.

[Petitioner]

Vs.

1. The Assistant Commissioner (CT)
Kilpauk Assessment Circle Chennai 10

2. The Appellate Deputy Commissioner (CT)(Central)
C.T. Building Annex
3rd Floor Greams Road Chennai 6.

[Respondents]

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for the impugned proceedings of the 1st respondent in TIN No. 33271120972 dt 23.11.2015 and quash the same and further direct the 1st respondent not to take any coercive steps to recover the disputed penalty amounts of Rs. 2,17,745/-, Rs.4,85,982/- and Rs.1,66,932/- in respect of Assessment Years TIN/33271120972/2009-2010, 2010-2011 and 2011-12 respectively till the disposal of the Appeal in A.P. VAT Nos. 269 to 271/2015 respectively as the petitioner has already filed a personal bond to safeguard the interest of the revenue.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.S.Kanmani Annamalai, AGP

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COMMON ORDER

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, who took notice for the respondents and with their consent, the main writ petitions are taken up for disposal.

2. The petitioner has come forward with these writ petitions challenging the orders of the 1st respondent dated 23.11.2015 and to direct the 1st respondent not to take any coercive steps to recovery the respective disputed penalty amounts till the disposal of Appeal Nos.269 to 271 of 2015.

3. The petitioner is a promoter of residential and commercial buildings and a registered dealer on the files of the 1st respondent under the provisions of the TNVAT Act, 2006. Based on the audit conducted by the Enforcement Wing Officials, the 1st respondent through the assessment orders dated 03.02.2015 passed for the assessment years in question, reversed the input tax credit for the reason that the same was not claimed within 90 days from the date of purchase or before the end of the assessment years in question, whichever is later. The 1st respondent also levied penalty under Section 27(3) and also under Section 27(4) of the TNVAT Act. Aggrieved over the same, the petitioner preferred appeals before the 2nd respondent. Since the petitioner has already paid the entire disputed tax, along with the appeals, stay petitions were filed seeking for stay of collection of the total respective disputed penalty. The 2nd respondent vide orders dated 20.04.2015 had granted stay for the entire respective penalty amounts for six months or till the disposal of the appeals, whichever is earlier, on condition that they should furnish bank guarantee. Challenging the said stay orders, the petitioner preferred writ petitions before this Court and this Court by order dated 30.04.2015 has modified the same by directing the petitioner to furnish personal bonds instead of bank guarantee for the disputed penalty amounts. It is stated that the petitioner has also filed personal bond before the 1st respondent on 13.05.2015 by complying with the conditional order passed by this Court. It is to be noted that the appeals filed by the petitioner is still pending before the 2nd respondent. Now, by order dated 23.11.2015, recovery notice is issued by the 1st respondent pointing out that since the stay orders are expired by completion of six months, immediately they proceeded with recovery.

4. When the petitioner has already paid 100% of the disputed tax and also furnished personal bond for the entire respective disputed penalty amounts, which is valid as on today, this Court is of the view that the 1st respondent is wrong in issuing recovery notice on the ground that the stay already

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granted by the appellate authority for six months had expired. In view of the same, these writ petitions are disposed of by extending the stay granted by the appellate authority pending disposal of the respective appeals. No costs. Connected miscellaneous petitions are closed.

rg

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Assistant Commissioner (CT)
Kilpauk Assessment Circle Chennai 10.

2. The Appellate Deputy Commissioner (CT)(Central)
C.T. Building Annex
3rd Floor Greams Road Chennai 6.

+ 1 cc to Mr.P.Rajkumar, Advocate Sr 66225.

+ 1 cc to the Spl.Govt. Pleader, (Taxes) Sr 66459.

VG/CO
KR/11/12

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