IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. No.6409 of 2015

M/s.Sanghvi Jeevraj Champalal,
rep. by its Partner Narendra Kumar ...Petitioner

Vs

1.The Appellate Deputy Commissioner
(CT) North, Greams Road,
Chennai-600 006.

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

Prayer: 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 SP No.24/2015 in CST/AP.1/2015 dated 23.02.2015 and to quash the same and to further direct the first respondent to grant an absolute stay for the balance of tax 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.Manoharan Sundaram, AGP(T)

O R D E R

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

2.The petitioner has come forward with the writ petition challenging the order dated 23.02.2015 on the file of Appellate Deputy Commissioner (Commercial Tax), 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.

3.The petitioner filed appeal before the 1st respondent challenging the Assessment order passed by the 2nd respondent in respect of the assessment year 2012-13. The appeal was taken on file by the 1st respondent along with stay petition filed by the petitioner. The appellate authority was pleased to grant an order of stay in the petition, 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 the stay petition. The said onerous condition is challenged in the writ petition.

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

5.It appears that the petitioner has already paid 25% of the tax at the time of filing of the appeal. 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) North, 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 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 order is modified and the petitioner is directed to pay further 10% out of the remaining 50% of the disputed tax in respect of the assessment year on or before 31.3.2015. 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 appeal. The petitioner is directed to execute the personal bond on or before 10.4.2015 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 appeal. The appellate authority shall dispose the appeal as expeditiously as possible.

8. The writ petition is disposed of with the above direction. No costs. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vga

To

1.The Appellate Deputy Commissioner
(CT) North, Greams Road,
Chennai-600 006.

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

1 CC to Ms.C.Rekha Kumari, Advocate SR.No. 13020

1 CC to the Government Pleader, SR.No. 13393

W.P. No.6409 of 2015

CA (CO)
PSI (27.03.2015)