

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7031 of 2015
and M.P.No.1 of 2015

M/s.Sun Timbers,
represented by its Propertrix
Mrs.Sakunthala
No.194, E.H.Road,
Korukkupet,
Chennai - 600 021. Petitioner

vs.

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

2.The Commercial Tax Officer,
Washermenpet Assessment Circle,
Chennai. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in SP.No.23/15 in A.P.32/15 dated 23.02.2015 and quash the same and further direct the first respondent to grant an absolute stay for the balance tax and 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 : Mr.C.Rekha Kumari
For Respondents : Mr.N.Manoharan Sundaram,
Additional Government Pleader (T)

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O R D E R

The petitioner has filed this Writ Petition seeking quash of proceedings of the first respondent passed in SP.No.23/15 in A.P.32/15 dated 23.02.2015 and a direction to the first respondent to grant an absolute stay for the balance tax and 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.

2. With consent of both the parties, this Writ Petition is taken up for hearing at the stage of admission itself.

3. Learned counsel for petitioner submits that 25% of the disputed tax amount has been paid in keeping with the order passed by the first respondent Appellate Authority in the stay petition and seeks modification insofar as the balance amount of tax and penalty for which bank guarantee was directed to be produced. Learned counsel further submits that such condition is onerous.

4. Learned counsel for petitioner relies on the decision of this Court, dated 09.11.2012 made in W.P.No.30301 of 2012 (M/s.R.A. & Co., rep. By its Partner vs. The Appellate Deputy Commissioner (CT) VI (FAC) and another) in which, in paragraph No.5, an earlier decision of this Court made in W.P.(MD) No.10567 of 2006 dated 27.11.2006 (M/s.Raja Ceramics represented by its Partner M.A.Nazimal Gani, 720 East Veli Street Madurai Vs. The Appellate Assistant Commissioner (CT) Madurai (South) was cited. Paragraph No.4 of the above decision reads as follows:

"4. In a number of similar matters, this Court modified the conditions. Considering the facts and circumstance of the case, the submission made on either side and keeping in view the fact that an automatic charge is created under Section 24(2) of the Tamil Nadu General Sales Tax Act on the properties of the defaulting assessee, the following order is passed:-

"The condition imposed in paragraph 6 of the order of the first respondent to the effect that the petitioner should furnish adequate security on or before 17.11.2006 is modified and the petitioner is directed to execute a personal bond for the balance of tax and penalty amounting to Rs.1,79,876/- (Rupees one lakh seventy nine thousand eight hundred and seventy six only) within a period of fifteen days from today, failing which, this order shall stand vacated."

5. In view of the above decision, this Court orders as follows:

(a) condition (i) of the impugned proceedings dated 23.02.2015 remains unaltered;

(b) insofar as condition (ii) is concerned, the petitioner shall furnish a personal bond instead of Bank Guarantee within a period of six weeks from the date of receipt of a copy of this order, failing which, the order shall stand automatically vacated.

This Writ Petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

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

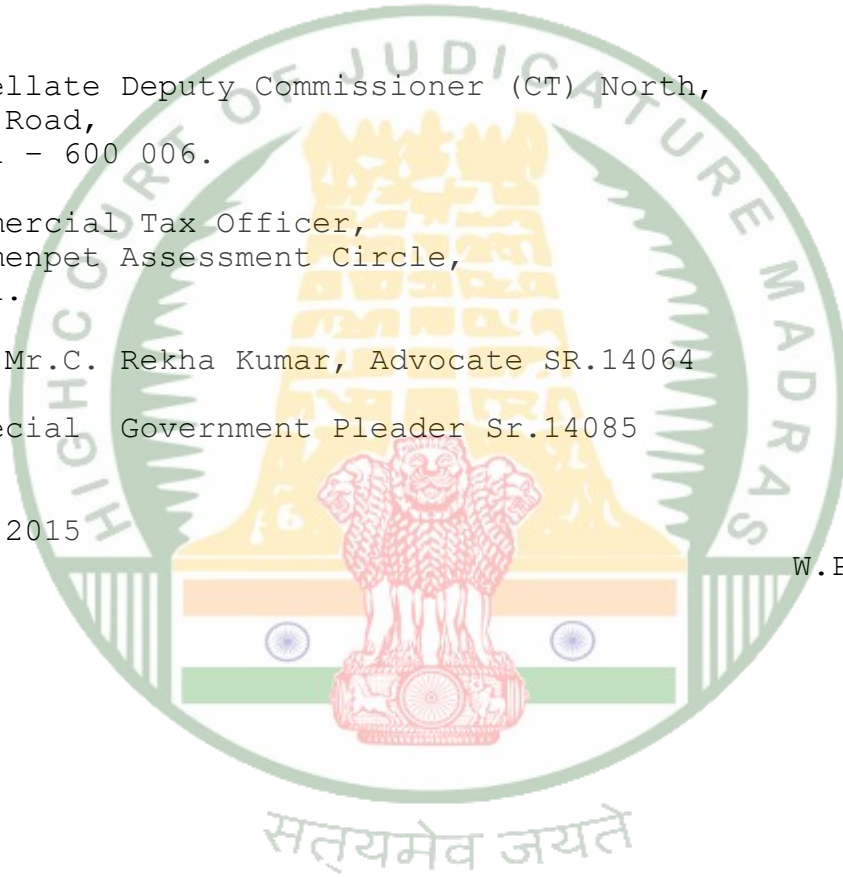
2.The Commercial Tax Officer,
Washermenpet Assessment Circle,
Chennai.

+ 1 cc to Mr.C. Rekha Kumar, Advocate SR.14064

+ 1 cc Special Government Pleader Sr.14085

GGK(CO)
EU 30.03.2015

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