

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 25.3.2015.

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.8421 to 8424 of 2015
and
M.P.No.1 of 2015 (4 cases)

M/s.H.M.Retail Outlet Pvt. Ltd
Rep. by its Director
Mr.Akbar Hussian
No.266/829-1
Periyar E.V.R. High Road
Chennai 600 010.

... Petitioner

vs.

1. The Appellate Deputy
Commissioner (CT) Central
Greens Road
Chennai 600 006.
2. The Commercial Tax Officer (CT)
Kilpauk Assessment Circle Chennai.

... Respondents

W.P.No.8421/2015

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records of the first respondent in SP.No.49/15 in A.P.VAT.63/15 dated 25/02/2015 and quash the same and further direct the first respondent to grant an absolute stay for the balance of tax and entire penalty amount without insisting upon furnishing of bank guarantee till the disposal of the appeal on the file of the first respondent.

W.P.No.8422/2015

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records of the first respondent in SP.No.97/15 in A.P.VAT.123/15 dated 25/02/2015 and quash the same and further direct the first respondent to grant an absolute stay for the balance of tax and entire penalty amount without insisting upon furnishing of bank

guarantee till the disposal of the appeal on the file of the first respondent.

W.P.No.8423/2015

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records of the first respondent in SP.No.42/15 in A.P.VAT.55/15 dated 20/02/2015 and quash the same and further direct the first respondent to grant an absolute stay for the balance of tax and entire penalty amount without insisting upon furnishing of bank guarantee till the disposal of the appeal on the file of the first respondent.

W.P.No.8424/2015

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records of the first respondent in SP.No.43/15 in A.P.VAT.56/15 dated 20/02/2015 and quash the same and further direct the first respondent to grant an absolute stay for the balance of tax and entire penalty amount without insisting upon furnishing of bank guarantee till the disposal of the appeal on the file of the first respondent.

For Petitioner : Ms.C.Rekha Kumar

For Respondents : Mr.Kanmani Annamalai, AGP(T)

COMMON ORDER

The petitioner has come forward with the aforesaid prayer.

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

3. Learned counsel for the 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 remains unaltered;
- (b) insofar as condition (ii) is concerned, the petitioner shall furnish a personal bonds instead of Bank Guarantee within a period of six weeks from the date of receipt of a copy of this order, failing which, the impugned order shall stand restored.

6. The Writ Petitions are disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar

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Sub Assistant Registrar

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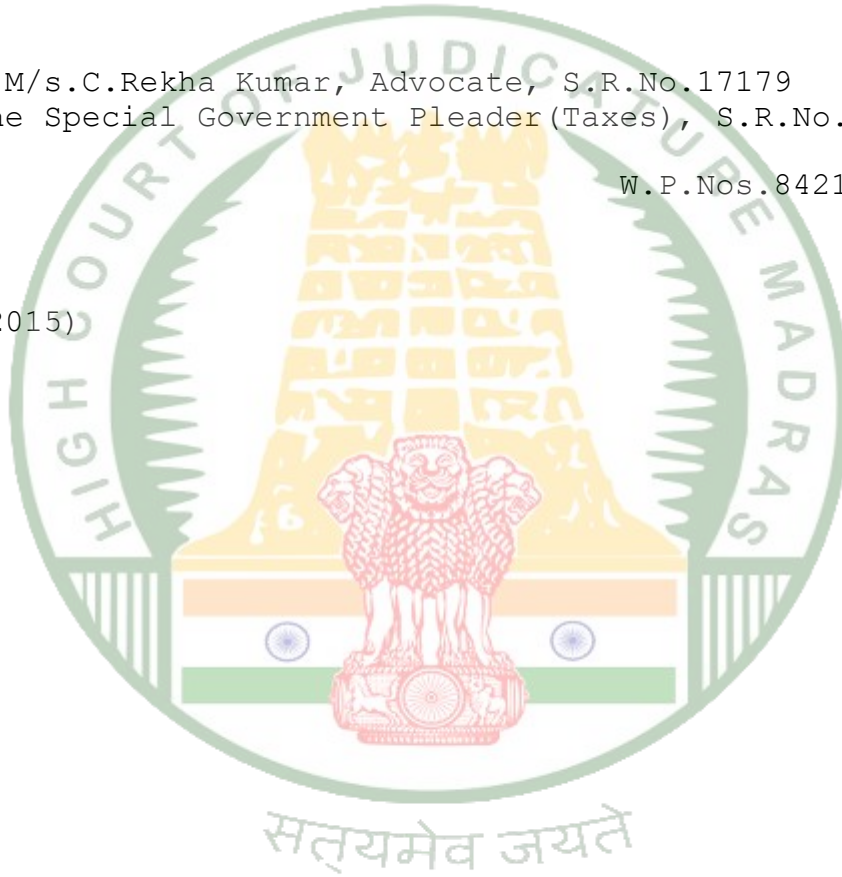
To

1. The Appellate Deputy
Commissioner (CT) Central
Greens Road
Chennai 600 006.
2. The Commercial Tax Officer (CT)
Kilpauk Assessment Circle,
Chennai.

+4cc's to M/s.C.Rekha Kumar, Advocate, S.R.No.17179
+1cc to the Special Government Pleader(Taxes), S.R.No.16868

W.P.Nos.8421 to 8424 of 2015

ALA(CO)
CA(08/04/2015)



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