IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P. Nos.8655 to 8658 of 2015
and
M.P.Nos.1 of 2015

Tvl.Indus Cityscapces
Construction (P) Ltd. ... Petitioner in all WPs
Rep by its Director
Meghraj Lunawath
5C Ega Trade Centre
No.809 Poonamallee High Road
Chennai 10

Vs

1. The Appellate Deputy
   Commissioner (CT)-Central C.T New Building
   Third Floor Chennai 6

2. The Assistant Commissioner (CT)
   Kilpauk Assessment Circle No. 57
   61 and 63 Dowlath Towers 7th Floor
   Taylors Road Chennai ... Respondents in all WPs

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, for the issuance of a writ of certiorarified Mandamus, to call for the records of the 1st respondent and quash the impugned proceedings in S.P. No.109/2015 in AP VAT 110/2015, S.P.No.110/2015 in AP VAT No.111/2015, S.P.No.111/12015 in AP VAT No.112/2015 and S.P.No.112/2015 in AP VAT No.113/2015 respectively dated 25.2.2015 in so far as condition of filing of Bank Guarantee for the balance amount of Rs.12 41 630/-, Rs.27,48,913/-, Rs.2,73,841/- and Rs.28,87,327- respectively.

For Petitioner : Mr.P.R.Kumar

For Respondents : Mr.A.N.R.Jayapratap,
Additional Government Pleader

COMMON ORDER

The writ petitions have been filed against the orders dated 25.02.2015, on the file of Appellate Deputy Commissioner (Commercial Tax), Chennai imposing a condition that the petitioner should produce Bank Guarantee for the balance tax amount and penalty in respect of the assessment years 2009-10 to 2012-2013 during the currency of the appellate proceedings.

2. The petitioner filed appeals before the 1st respondent challenging the Assessment orders passed by the 2nd respondent in respect of the assessment years 2009-10 to 2012-2013. The appeals were taken on file by the 1st respondent along with stay petitions filed by the petitioner. The appellate authority was pleased to grant an order of stay, directing the petitioner to pay another 25% of the disputed amount of tax for each of the assessment years 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 and penalty in each of the cases in all the respective stay petitions. The said onerous condition is challenged in these writ petitions.

3. I have heard the learned counsel for the petitioner and the learned Additional Government Pleader (Tax) appearing for the respondents.

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

5. It appears that the petitioner has already paid 25% of the tax at the time of filing of the appeals. 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 and penalty.

6. Considering the factual matrix, I am inclined to modify the said condition imposed by the Appellate Deputy Commissioner, (CT), Chennai, 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%o f 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 orders are modified and the petitioner is permitted to execute personal bond instead of bank guarantee in each of the cases undertaking to pay the balance amount of disputed tax and penalty, if the petitioner fails to succeed in the respective appeals. The petitioner is directed to execute the personal bond in each of the cases before the end of April 2015 and in case of execution of such personal bonds, the order of stay granted by the 1st respondent would be in force, till the disposal of the statutory appeals. The appellate authority shall dispose the appeals as expeditiously as possible.

8. The writ petitions are disposed of with the above directions. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Appellate Deputy
   Commissioner (CT)-Central C.T New Building
   Third Floor Chennai 6

2. The Assistant Commissioner (CT)
   Kilpauk Assessment Circle No. 57
   61 and 63 Dowlath Towers 7th Floor
   Taylors Road Chennai

W.P.Nos.8655 to 8658 of 2015

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