IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P. Nos.9224 and 9225 of 2015
and
M.P.Nos.1 of 2015

BHAGYAM CONSTRUCTIONS
Rep. by its Proprietor
V.Ramaswamy
No.2, Sarangapani Street
T.Nagar Chennai-17. [Petitioner in W.P.No.9224 of 2015]

Sundaram Constructions
Rep.by its Managing Partner
M.K.Sundaram,
Senthil Tower,
A1 1st Avenue, Ashok Nagar,
Chennai. [Petitioner in W.P.No.9225 of 2015]

Vs

1 The Appellate Deputy Commissioner (CT) Central PAPJM Buildings Greams Road Chennai-6. ...1st Respondent in both

2 The Assistant Commissioner(CT) Pondy Bazaar Assessment Circle No.46 Greenways Road R.A.Puram Chennai-28. ...2nd Respondent in W.P.No.9224 of 2015

3 The Assistant Commissioner, Saligram Assessment Circle, Ashok Nagar, Chennai - 83. ...2nd Respondent in W.P.No.9225 of 2015

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 impugned proceedings of the 1st respondent passed in S.P.No.164 of 2015 in AP.VAT 176 of 2015 and S.P.No.60 of 2015 in AP.VAT 75 of 2015 respectivley dated 6.3.2015 and to quash the same in so far as directing the petitioner to furnish Bank Guarantee for balance amount of Rs.51,72,035/- and Rs.43,62,376/- respectively and further direct the 1st respondent to accept personal bond for the sum of Rs.51,72,035/- and Rs.43,62,376/- respectively instead of Bank Guarantee pending disposal of appeal in AP.VAT 176 of 2015 and A.P.VAT 75 of 2015 respectively.

For Petitioner : Mr.N.Murali

For Respondents : Mr.Mohanasundaram,
Additional Government Pleader(T)

COMMON ORDER

The writ petitions have been filed against the orders dated 06.03.2015, 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 in respect of the assessment years 2008-2009 and 2007-2008 respectively 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 2008-2009 and 2007-2008. 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 in respect of assessment year 2008-2009 and with respect to balance amount of tax and penalty in respect of assessment year 2007-2008 in 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 in respect of assessment year 2008-2009 and with respect to balance amount of tax and penalty in respect of assessment year 2007-2008.

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.
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> 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.
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> 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 in respect of assessment year 2008-2009 and with respect to balance amount of tax and penalty in respect of assessment year 2007-2008, 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(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1 The Appellate Deputy
Commissioner (CT) Central PAPJM Buildings
Greams Road Chennai-6.

2 The Assistant Commissioner(CT)
Pondy Bazaar Assessment Circle No.46
Greenways Road R.A.Puram Chennai-28.

3 The Assistant Commissioner,
Saligram Assessment Circle,
Ashok Nagar,
Chennai - 83.

2 CCs to Mr.N.Murali, Advocate SR.No. 18018 & 18017

1 CC to the Government Pleader, SR.No. 18232

KJI (CO)
PSI (11.04.2015)