IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

WP.Nos.9358 to 9363/2015

Elite Constructors [Chennai] P.Limited, rep. by its Director NDS Sathak Ansari, 78, Greams Road, Chennai - 6. .. Petitioner in all the writ petitions

Versus

1.The Appellate Deputy Commissioner [CT] Central, CT New Building, 3rd Floor, Greams Road, Chennai 600 006.

2.The Commercial Tax Officer [CT] Egmore II Assessment Circle Taluk Office Building, Spurtank Road Chennai 600 031. .. Respondents in all the writ petitions

Writ petitions filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the 1st respondent in SP.Nos.149/15 ; 150/15 ; 151/15 ; 152/15 ; 153/15 and 154/15 in VAT 509/14 ; VAT 510/114 ; VAT 508/14 ; VAT 511/14 ; VAT 512/14 and VAT 513/14 and quash the order dated 09.03.2015 so far as the condition of furnishing of security for the penalty in the form of immovable property or Bank Gurantee is concerned pending disposal of the appeal.

For Petitioner in all the petitions : Mr.R.Kumar

For Respondents in all the petitions : Mr.Manoharan Sundaram, AGP [Taxes]

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COMMON ORDER

Heard Mr.R.Kumar, learned counsel appearing for the petitioner ; Mr.Manoharan Sundaram, learned Additional Government Pleader [Taxes] accepting notice for the respondents and with their consent, the writ petitions itself are disposed of at the admission stage itself. Since the issue involved in these writ petitions and the parties are

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one and the same, the above petitions are disposed of by the following common order.

2.These writ petitions have been filed against the orders dated 09.03.2015, 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 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013 respectively during the currency of the appellate proceedings.

3. The petitioner filed appeals before the 1st respondent challenging the Assessment orders passed by the 2nd respondent in respect of the assessment years 2008-2008 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 in respect of assessment years 2007 to 2013 and with respect to balance amount of tax and penalty in respect of assessment years 2007 to 2013 in the respective stay petitions. The said onerous condition is challenged in these writ petitions.

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

5. 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.

6. 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 years 2007 to 2013 and with respect to balance amount of tax and penalty in respect of assessment years 2007 to 2013.

7. 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

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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".

8. 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 years 2007 to 2013 and with respect to balance amount of tax and penalty in respect of assessment years 2007 to 2013, 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 May 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.

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

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Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1.The Appellate Deputy Commissioner [CT]
Central, CT New Building, 3rd Floor, Greams
Road, Chennai 600 006.

2.The Commercial Tax Officer [CT]
Egmore II Assessment Circle
Taluk Office Building, Spurtank Road
Chennai 600 031.

+1 cc to Spl.Government Pleader(T),SR.18241

+1 cc to Mr.R.Kumar, Advocate,SR.18005.

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