IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.9533 and 9534 of 2015

Tvl.International Wires
Rep. by its Proprietor
C.Shahul Hameed
16,Venkata Maistry Street
Chennai-1. [Petitioner in both WPs]

Vs

1 The Appellate Deputy Commissioner (CT) Chennai (North) III Floor Commercial Taxes Annexe Building 1 Greams Road Chennai-6.

2 The Assistant Commissioner(CT) Harbour V Assessment Circle Wawoo Complex Chennai-1. [Respondents in both WPs]

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the first respondent in his proceedings in SP.No.7/2015 in VAT/AP.No.13/2015 and S.P.No.6/2015 in VAT/AP.No.12/2015 respectively dated 02.03.2015 and quash the same as illegal in so far as the condition of furnishing of Bank Guarantee is concerned.

For Petitioner : Mr.S.Ramanathan

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

O R D E R

The petitioner has filed these Writ Petitions seeking to quash the proceedings of the first respondent passed in SP.No.7/2015 in

VAT/AP.No.13/2015 and S.P.No.6/2015 in VAT/AP.No.12/2015 respectively dated 02.03.2015.

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

3. The petitioner filed appeals before the 1st respondent challenging the Assessment orders passed by the 2nd respondent in respect of the assessment years 2007-2008 and 2008-2009. 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/penalty in both the cases 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/penalty.

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 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, following the above decision, this Court orders as follows:

(a) condition (i) of the impugned proceedings dated 02.03.2015 remain unaltered;

(b) insofar as condition (ii) is concerned, the petitioner shall furnish a personal bond undertaking to pay the balance amount of disputed tax/penalty, if the petitioner fails to succeed in the respective appeals instead of Bank Guarantee, within a period of two weeks from the date of receipt of a copy of this order, failing which, the order shall stand automatically vacated. 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.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1 The Appellate Deputy
Commissioner (CT) Chennai (North) III Floor
Commercial Taxes Annexe Building 1 Greams
Road Chennai-6.

2 The Assistant Commissioner(CT)
Harbour V Assessment Circle Wawoo Complex
Chennai-1.

1 CC to Mr.S.Ramanathan, Advocate SR.No. 18303

1 CC to Spl. Government Pleader, SR.No. 18652

W.P.Nos.9533 and 9534 of 2015

KK (CO)
PSI (10.04.2015)