BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD).Nos.10001 to 10003 of 2015
and
M.P.(MD).No.1 of 2015 (each WPs)

M/s.MRF Agency,
rep.by its Propertix, Fathima, 40/10,
Power House Road, Madurai.
... Petitioner in all WPs

Vs.

1..The Appellate Deputy Commissioner(CT)(FAC),
Madurai (North)
Madurai.

2.The Commercial Tax Officer,
Netaji Road Circle, Madurai.
... Respondents in all WPs

Writ Petitions filed under Article 226 of the Constitution of India for the issuance of Writs of Certiorarified Mandamus calling for the records of the First Respondent in his proceedings in S.P. Nos.12 to 14/2015 in VAT AP.Nos.121 to 123/2015, quash the orders therein, dated 19.05.2015 and further direct the first respondent to give personal bonds in substitution of the bank guarantee in respect of the amount of balance of taxes and penalty.

For all Writ Petitions :-
For petitioner : Mr.J.Madhusuthanan
for M/S. K. VATTHEESWARAN
For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

COMMON ORDER

Aggrieved against the conditions imposed by the appellate authority, while granting stay, the petitioner firm is before this Court.

2. Mr.R.Karthikeyan, learned Additional Government Pleader takes notice for the respondents.

3. By consent, these writ petitions are taken up for final disposal.

4. The learned counsel appearing for the petitioner in all Writ Petitions would submit through the grounds of appeal, filed in support of the Writ Petitions, that the petitioner firm had duly complied with the first portion of the condition imposed by the respondents vide its impugned orders dated 19.05.2015. In view of the financial difficulties, the petitioner firm could not file a Security Bond or Bank Guarantee. He would further submit that the amount demanded by the respondents is a disputed question, which has to be decided by the appellate authority concerned. Therefore, he seeks modification of the impugned orders dated 19.05.2015 of the appellate authority.

5. The learned Additional Government Pleader would only contend that even as per the decision of the Supreme Court unless safe guard in respect of payment in question is made, the revenue of the Government will be at stake. Therefore, the order of the appellate authority holds good.

Heard both sides.

6. In a similar occasion, the Division Bench of this Court made in W.A.(MD).No.194 of 2005, dated 13.07.2006, has stated 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 respondent, the appellant has also paid another 20% of 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 view of the earlier order and also in view of the fact that the petitioner firm has already complied with the first

portion of the condition imposed by the respondents, this court, considering the facts and circumstances of the case, modifies the conditions imposed by the appellate authority only insofar as to the grant of Bank Guarantee:-

(i) For the entire balance amount of tax and penalty amount, the petitioner firm shall execute a personal bond in each of the Writ Petitions, with the appellate authority, within a period of two weeks from the date of receipt of a copy of this order.

(ii) After the first condition is fulfilled, there will be an order of interim stay pending disposal of the appeal.

(iii) In case, if the petitioner firm fails to furnish the personal bond for the amounts in question, this modification granted by this Court shall stand cancelled without any reference to this Court and the order of the appellate authority will get automatically restored.

8. These Writ Petitions stand allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

SD
ASST REGISTRAR - T AND P

TRUE COPY

SUB ASST REGISTRAR

ssm

To

1..The Appellate Deputy Commissioner(CT)(FAC),
Madurai (North) Madurai.

2.The Commercial Tax Officer,
Netaji Road Circle, Madurai.

1CC TO MR. M.M. MANIVELPANDIAN, ADV SR;32406
1CC TO THE SPL GP SR; 32627

DM 8 7 15 3P 5C

W.P(MD).Nos.10001 to 10003 of 2015
and M.P.(MD).No.1 of 2015 (each WPs)
20.04.2015