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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.08.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.(MD)No.15331 of 2015

M/s.Raja Enterprises,
No.130, W.B.Road,
Tiruchirapalli - 620 008,
rep.by its Partner. .. Petitioner

Vs.

1.The Appellate Deputy Commissioner,
(Commercial Taxes)
Tiruchirapalli.

2.The Assistant Commissioner,
(Commercial Taxes)
Commercial Taxes Department,
Mailam Chantahi I Circle,
Tiruchirapalli - 620 020. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the impugned order bearing S.P.No.168/2015/VAT.AP/155/2015 dated 10.08.2015 of the 1st respondent and quash the same in so far as it relates to the conditions contained in paragraph 9.2 9.3 and 10 of the said order.

For Petitioner : Mr.AR.L.Sundaresan
Senior Counsel for AL.Ganthimathi
For Respondents : Mr.R.Karthikeyan
Governemnt Advocate takes notice

ORDER

Challenging the impugned order dated 10.08.2015 passed in S.P.No.168/2015/VAT.AP/155/2015 by the first respondent in so far as it relates to the conditions contained in paragraphs - 9.2 9.3 and 10, the present writ petition has been filed.

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

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3.By consent, the present writ petition itself is taken up for final disposal at the stage of admission.

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4.The only grievance put forth by the learned counsel appearing for the petitioner is that against the Demand notice issued by the second respondent, the petitioner has filed a statutory appeal under Sections 51 and 52 of the Tamilnadu Value Added Tax Act on 09.07.2015 before the first respondent. The said Appeal was filed along with an application for granting stay till the disposal of the Appeal without insisting for furnishing any security, since the petitioner has already paid a sum of Rs.27,18,581/- during field audit, which works out to 38.89%, out of the total amount of Rs.69,90,168/-, demanded by the second respondent. But the said Appeal and Stay petition were not taken up for hearing, instead, the second respondent took steps to recover the tax amount as demanded by him. Hence, the petitioner has filed WP(MD)No.12698 of 2015 on the file of this Court and pursuant to the direction given by this Court to the first respondent in the said Writ petition, Stay petition alone was taken up for hearing and the following order was passed:

> 9(i)There shall be a stay for a period of six months or till the disposal of case whichever is earlier from the date of issue of this order.
>
> (ii)The petitioner shall pay a further payment of Rs.10,67,897/- on the disputed tax and file a security bond or bank guarantee for the balance of tax of Rs.32,03,690/- on or before 09.09.2015.
>
> (iii)The bank guarantee shall be for a period of six months that is upto 09.02.2016 and the duplicate copy of bank guarantee attested by Assistant Commissioner, Mailamchanai-I, Assessment Circle, shall be filed in this office for notice.

5. The learned Senior Counsel would submit that the petitioner has already paid a sum of Rs.27,18,581/-, which is 38.89% of the amount demanded by the second respondent. While, that being so, the first respondent ought not to have directed the petitioner to pay another some of Rs.10,67,897/- and therefore, sought for quashing the impugned order dated 10.08.2015 passed by the second respondent.

6. The learned Senior Counsel appearing for the petitioner has also relied on a judgment of a learned Single Judge of this Court in ***W.P.No.1521 of 2005, dated 8.3.2005 in the case of M/s. Mangayarkarasi Mills Private Limited, Madurai .vs. The Appellate Assistant Commissioner(CT), Madurai(south) and another*** and also various orders passed by this Court in other Writ Petitions and submitted that in all the cases the Writ Petitioners are directed to execute a personal bond instead of furnishing bank guarantee. Therefore following the same, similar order could be passed.

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7. Heard the learned Additional Government Pleader appearing for the respondents.

8.Considering the submission made by either side and following the order passed in the Writ Petition referred to above, the Writ Petition is disposed of, with a direction to the petitioner to pay a sum of Rs.3,00,000/- instead of Rs.10,67,897/- as demanded by the first respondent and execute a personal bond instead of furnishing bank guarantee, as required by the appellate authority as a condition for grant of stay. Such a personal bond shall be executed within a period of two weeks from the date of receipt of a copy of this order. On receipt of the personal bond, the appellate authority is directed to dispose of the appeal on merits. On execution of the personal bond, the stay granted by the appellate authority shall continue till the disposal of the appeal. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

1.The Appellate Deputy Commissioner,
(Commercial Taxes)
Tiruchirapalli.

2.The Assistant Commissioner,
(Commercial Taxes)
Commercial Taxes Department,
Mailam Chantahi I Circle,
Tiruchirapalli - 620 020.

+1cc to Mr.AL.GANTHIMATHI, Advocate Sr.No.49427
+1cc to Spl.Government Pleader Sr.No. 49477
mj
AA/04.09.2015/3p-5c

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