BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.09.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.(MD)No.17503 of 2015

Radhas Company,
rep. By its Properietrix: T.D. Brindha
No.25, E.Block, TPK Road,
Madurai. ... Petitioner

Vs.

1.THE APPELLATE DEPUTY COMMISSIONER (CT) (FAC),
Madurai (south), Madurai - 20

2.THE COMMERCIAL TAX OFFICER,
West Veli Street, Assessment Circle,
Madurai – 20 ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the of the first respondent in SP No.47/2015 in VAT AP No.125/2015 dated 24.08.2015, quash the same in so far as the condition to file Security Bond or Bank guarantee for the balance tax and entire penalty of Rs.3,37,722/- is concerned and further direct the first respondent to grant stay till disposal of the petitioner's appeal, VAT AP.125/2015.

For Petitioner ... MrA. Chandrasekaran
For Respondents ... Mr.R.Karthikeyan
Additional Government Pleader

ORDER

The writ petition has been filed for issuance of a Writ of Certiorarified Mandamus calling for the records, on the file of the of the first respondent in SP.No.47/2015 in VAT AP.No.125/2015, dated 24.08.2015, quash the same in so far as the condition to file Security Bond or Bank guarantee for the balance tax and entire penalty of Rs.3,37,722/- is concerned and further direct the first respondent to grant stay till disposal of the petitioner's appeal, VAT AP.125/2015.

2.In the affidavit, it is averred that the petitioner is a registered dealer on the file of the second respondent under the Provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as TNVAT Act). For the assessment year 2012-13, the petitioner reported a total and taxable turnover of Rs.97,51,788/- through their regular monthly returns, before the second respondent and paid the tax and other amounts due thereon, accordingly, after availing the Input Tax Credit available to them, as per the TNVAT Act and Rules. Subsequently, the second respondent issued a notice on 26.11.2014, stating that on further scrutiny of the petitioner's Form WW reveals certain difference in the turnover reported and further alleged that certain claims of input tax credited by the petitioner are not eligible and hence, proposed to reverse the same and further proposed to levy penalty thereon. The petitioner filed a detailed reply objecting to the aforesaid proposals. But, the second respondent without considering the petitioner's reply and objections, based on the show-cause notice, passed a revised order of assessment vide his proceedings in TIN.NO.33245022183/2012-13, dated 13.02.2015, against which the petitioner has filed an appeal before the first respondent / Appellate Deputy Commissioner (CT) (FAC), Madurai (South), in VAT AP.No.125 of 2015, after paying 25% of the disputed tax. The petitioner has also filed a stay petition for the balance amount of Rs.3,04,216/- and the entire penalty of Rs.1,34,911/- and in which, a conditional order of stay was passed directing the petitioner to pay a further amount of tax of Rs.1,01,405/- and to file a security bond or bank guarantee, for the balance tax and entire penalty of Rs.3,37,722/-, on or before 23.09.2015, for a period of six months or till the disposal of the case, whichever is earlier from the date of issue of that order. The petitioner has remitted the tax amount of Rs.1,01,405/- on 4.09.2015 and 14.09.2015. It is further stated that in view of the financial difficulties, the petitioner Company is finding it difficult to cater its day-to-day needs. Hence, the petitioner has filed the present writ petition for the relief stated supra.

3.When the matter is taken up for consideration, the learned counsel for the petitioner has 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.

4. Heard the learned counsel appearing on either side and perused the material records available on record.

5.Considering the submission made by either side, following the order passed in the Writ Petition referred above, the Writ Petition is disposed of, with a direction to the petitioner to 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.

Sd/-
Assistant Registrar(Per Admn)

/TURE COPY/

Sub Assistant Registrar

trp

To

1.THE APPELLATE DEPUTY COMMISSIONER (CT) (FAC),
Madurai (south), Madurai - 20

2.THE COMMERCIAL TAX OFFICER,
West Veli Street, Assessment Circle,
Madurai - 20

+1 cc to MR.A.CHANDRASEKARAN , ADVOCATE, SR NO: 57204
+1 CC to M/S.SPL.GOVT.PLEADER, SR NO: 57485

JAM /20.10.2015/AAL-MPA/3P-5C

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