BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:17.03.2015

CORAM:
THE HONOURABLE MR.JUSTICE B.RAJENDRAN
W.P.(MD)No.3709 of 2015

M/s. Maruthi Auto Store,
represented by its Proprietor
V.Sivaraman.
162-163, Panthadi 3rd Street, Palace Road,
Madurai. ... Petitioner

Vs.

1. The Appellate Deputy Commissioner (CT),
   Madurai (South), Madurai.
2. The Commercial Tax Officer,
   Mahal Assessment Circle,
   Madurai. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified mandamus to call for the records in S.P.No.9/2015 in VAT A.P.No.27/2012 dated 16.02.2015 on the file of the first respondent and quash the same as illegal and direct the second respondent to accept the personal bond to be executed by the petitioner in lieu of security.

For Petitioner : Mr.S.Karunakar
For Respondents : Mr.A.Muthukaruppan
Additional Govt. Pleader

O R D E R

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

2.Mr.A.Muthukaruupan, learned Additional Government Pleader takes notice for the respondents.

3. By consent, the writ petition itself is taken up for final disposal.

4. The learned counsel for the petitioner submitted that the petitioner firm has already paid 50% of the disputed tax. For the balance amount, the appellate authority directed the petitioner firm to file a Security Bond or Bank Guarantee. However, the petitioner firm is not in a position to provide the same. The learned counsel appearing for the petitioner submitted that the amount demanded by the respondents is a disputed question, which has to be decided by the authority concerned. Therefore, he seeks modification of the order of the appellate authority.

5. The learned Additional Government Pleader would contend that even as per the decision of the Supreme Court unless safeguard 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.

6. Heard both sides.

7. The short point involved in the Writ Petition is the conditions imposed by the appellate authority in respect of stay granted in favour of the petitioner firm. As stated earlier, the petitioner firm has already paid 50% of the tax amount in question. Now the question is regarding security bond or bank guarantee for the balance of tax and

penalty amount.

8. In a similar occasion, I had an occasion to deal with the matter in W.P.(MD).No.20273 of 2013 dated 16.12.2013.In paragraph No.5, I have observed as follows:-

> "5. In an unreported judgment of the Division Bench of this Court made in W.A.(MD).No.194 of 2005, dated 13.07.2006, this Court 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."

9. In view of the fact that the petitioner firm has already paid 50% of the tax amount and considering the facts and circumstances of the case, this Court modifies the conditions imposed by the appellate authority only insofar as to the grant of Bank Guarantee:-

(i) In lieu of Bank Guarantee, as directed by the appellate authority, the petitioner firm shall pay another 10% of the disputed tax demanded in the notice to the respondents, within a period of two weeks from the date of receipt of a copy of this order.

(ii) For the balance tax amount as well as for the entire penalty amount, the petitioner firm shall execute a personal bond with the appellate authority within a period of four weeks from the date of receipt of a copy of this order.

It is made clear that if the petitioner firm fails to adhere any one of the conditions imposed by this Court through this order, 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.

The Writ Petition stands allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub- Assistant Registrar

To

1. The Appellate Deputy Commissioner (CT),
   Madurai (South),
   Madurai.

2. The Commercial Tax Officer,
   Mahal Assessment Circle,
   Madurai.

+1cc to Mr.S.Karunakar, Advocate in SR.No. 13018
+1cc to Special Government Pleader in SR.No. 13220

akv
Sm:16.04.2015:3P/5C

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