



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.04.2015

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P (MD) .No.6056 of 2015

M/s.Sri Vari Alamelu jewellers,
rep.by its Partner S.Shanmuganathan,
22,Chokkappanaicker Street,
Madurai. ... Petitioner

Vs.

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

Writ Petitions filed under Article 226 of the Constitution of India for the issuance of Writs of Certiorarified Mandamus calling for the records in S.P. No.21/2015 in TNVAT AP.No.96/2015 dated 25.03.2015 on the file of the second Respondent and quash the same as illegal and direct the first 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 Government Pleader takes Notice

ORDER

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

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

3. By consent, this writ petition is taken up for final



4. The learned counsel appearing for the petitioner would submit through the grounds of appeal filed in support of the Writ Petition, that the respondents have collected the entire disputed tax amount from the petitioner firm and only the penalty amount to be paid by the petitioner firm to which 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. 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 order 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 paid the entire disputed tax amount, the 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 penalty amount, the petitioner firm shall execute a personal bond 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 penalty amount as imposed by the respondents, 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. This Writ Petition stands allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub-Assistant Registrar

To

1.The Commercial Tax Officer,
Mahal Circle, Madurai.

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

+One cc to Mr.S.Karunakar, Advocate, SR.No.19877

+One cc to The Special Government Pleader, SR.No.20361

ssm
RL/5c - 8/5/2015

W.P(MD).No.6056 of 2015

20.04.2015