BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.04.2015

CORAM

THE HONOURABLE **MR.JUSTICE R.MAHADEVAN**

W.P(MD).Nos.6542 & 6543 of 2015

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M/s.Indubala Rasi Company,
rep.by its Partner
T.R.S.G.Swameeraj Rajan,
8,KRA Complex,
Ram Nagar, Byepass Road.
Madurai. ... Petitioner in both WPs

Vs.

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

2.The Commercial Tax Officer,
Madurai Rural (South) Circle,
Madurai. ... Respondents in both WPs

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. Nos.25 & 26/2015 in TNVAT AP.Nos.34 and 35 of 2015 dated 15.04.2015 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 Government Pleader

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COMMON 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, these writ petitions are taken up for final disposal.

4. The learned counsel appearing for the petitioner would submit through ground No.f of the affidavits filed in support of these Writ Petitions, that the petitioner firm has already paid 50% of the disputed

tax amount and for the arrears amount, the appellate authority directed the petitioner firm to file a Security Bond or Bank Guarantee. Aggrieve over the same, the petitioner firm has filed these Writ Petitions.

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 2305, dated 13.07.2306, 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 23% 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 50% disputed tax amount, 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 in each of the Writ Petitions:-

(i) For the entire 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 in each of the Writ Petitions.

(iii) In case, if the petitioner firm fails to furnish the personal bond for the penalty amount in each of the Writ Petitions, 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 and it is open to the authorities to proceed in accordance with law.

8. These Writ Petitions stand allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar (AE)

/True copy/

Sub Assistant Registrar(C.S.)

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

2.The Commercial Tax Officer,
Madurai Rural (South) Circle,
Madurai.

+2cc to Mr.S.KARUNAKAR, Advocate, in SR. No. 21622

+1cc to Special Government Pleader, in SR No. 22156

TS/11.05.2015/3P-5C

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