IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2016

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.26838 of 2016

Sri Kalaivani Spinners (P) Limited
represented by its Director
RM.Muthu
13/200 Myvadi Village
Udumalpet. ...Petitioner

Vs

1.The Assistant Commissioner
Commercial Taxes
Udumalpet (North)Circle
Udumalpet.

2.The Appellate Deputy Commissioner
Commercial Taxes
Pollachi. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent herein in SP No.09/2016 VAT No.57/2016, dated 13.07.2016 and quash the same while directing the petitioner to furnish personal bond instead of bank guarantee as ordered by the 2nd respondent in his proceedings dated 13.07.2016 or pass such further orders as may be deemed fit and proper in the circumstances of the case.

For Petitioner : Mr.N.Inbarajan

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

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O R D E R

Heard Mr.N.Inbarajan, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepting notice on behalf of the respondents and with the consent of learned counsel appearing on either side, this Writ Petition is taken up for final disposal.

2. The petitioner has challenged the order passed by the Appellate Deputy Commissioner (CT), Pollachi, dated 13.07.2016, which is an order passed in the stay petition

filed by the petitioner in S.P.No.09 of 2016 in Appeal No.57/2016 filed against the order of assessment under Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) for the year 2014-2015, dated 05.04.2016. The petitioner is aggrieved only by that portion of the impugned order, whereby, the petitioner has been directed to furnish a Bank Guarantee for a sum of Rs.31,67,017/-.

3. On a perusal of the impugned order, it is seen that the Appellate Authority has recorded the fact that the petitioner has already paid 78% of tax dues at the time of assessment itself. Under normal circumstances, when an appeal is presented by an assessee, 25% of the disputed tax has to be mandatorily paid over and above which the Appellate Authority may exercise discretion and in no case, the Appellate Authority would normally direct more than 50% of the disputed tax to be remitted as a condition precedent for hearing the appeal, on merits.

4. When the Appellate Authority has admitted that 78% of tax dues had been paid by the petitioner even at the time of assessment, this Court is of the view that it would be unfair to insist upon the petitioner to furnish a Bank Guarantee for the remaining amount. Accordingly, the Writ Petition is partly allowed and that portion of the impugned order insisting furnishing of Bank Guarantee for Rs.31,67,017/- stands modified and the petitioner is directed to furnish a bond for the said sum to the satisfaction of the first respondent within a period of two weeks from the date of receipt of a copy of this order. The connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To
1.The Assistant Commissioner
Commercial Taxes
Udumalpet (North)Circle,Udumalpet.

2.The Appellate Deputy Commissioner
Commercial Taxes, Pollachi.

+1 cc to mr.N.Inbarajan, advocate,sr.43509

+1 cc to spl.Govt.Pleader,sr.43864.

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