

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.11.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.38266 of 2016

and

W.M.P.No.32812 of 2016

M/s. Bhavya Pipes,
rep. by its Proprietrix.

...Petitioner

Vs

1. The Appellate Deputy Commissioner (CT) (FAC)
North Division, Greams Road,
Chennai.
2. The Assistant Commissioner (CT)
Harbour Assessment Circle,
No.116, Angoppa Naicken St.,
Chennai.

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the first respondent in S.P.No.93 of 2016, in APV. No.145 of 2016, dated 03.10.2016, and to quash the same, and further, to direct the first respondent to grant absolute stay for balance tax and penalty amount without insisting upon furnishing of security in the form of Bank Guarantee, till the disposal of the Appeal pending on the file of the first respondent.

For Petitioner : M/s.C.Rekha Kumari
For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

With the consent of the learned counsel on either side, the Writ Petition itself is taken up for final disposal.

2. In this Writ Petition, the petitioner has challenged the order passed by the Appellate Deputy Commissioner (CT) (FAC) North, the first respondent, in a Petition for Stay, in S.P.No.93 of 2016, in APV No.145 of 2016, dated 03.10.2016.

3. Aggrieved by the assessment order passed by the second respondent/Assistant Commissioner (CT), under the provisions of Tamil Nadu Value Added Tax Act, 2006, for the assessment year 2013-14, the petitioner filed an Appeal before the first respondent/Appellate Authority and deposited 25% of the disputed tax amount, as pre-deposit for filing the Appeal. Along with the Appeal, the petitioner also filed a Petition for Stay before the first respondent/Appellate Authority. The first respondent/Appellate Authority, by the impugned order, dated 03.10.2016, granted absolute stay till the disposal of the Appeal with conditions, i.e., i) directing the petitioner to pay 25% of the disputed tax amount, and insofar as the balance 50% of the tax and penalty are concerned, the petitioner was directed to furnish security in the form of a bank guarantee, on or before 02.11.2016. It is not in dispute that the petitioner has already paid 25% of the disputed tax at the time of filing the Appeal, and further paid 25% of the disputed tax, as per the direction issued by the first respondent/Appellate Authority. In toto, the petitioner has paid 50% of the disputed tax. Insofar as balance amount and penalty are concerned, in respect of which, the first respondent has directed the petitioner to furnish bank guarantee, the petitioner finds it as onerous, which has resulted in filing of this Writ Petition, seeking to quash the said condition.

4. Heard M/s.C.Rekha Kumari, the learned counsel appearing on behalf of the petitioner, and Mr.K.Venkatesh, learned Government Advocate, accepting notice on behalf of the respondent, and perused the materials available on record. As this Court, in a catena of decisions, directed the assessee to execute a personal bond in lieu of furnishing bank guarantee, is of the view that it would be sufficient if the petitioner furnishes bond for the balance 50% of the tax and penalty instead of bank guarantee. Accordingly, the present Writ Petition is partly allowed, and the condition imposed by the first respondent in the impugned order with regard to furnishing of bank guarantee is set aside, and the condition is modified to the following effect:-

i) The petitioner shall execute a personal bond for the balance tax amount and penalty for the respective assessment year, in lieu of furnishing bank guarantee, within a period of two weeks from the date of receipt of a copy of this order, and keep the bond alive till the disposal of the Appeal by the first respondent/Appellate Authority.

5. In the result, the Writ Petition is partly allowed, as indicated above. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

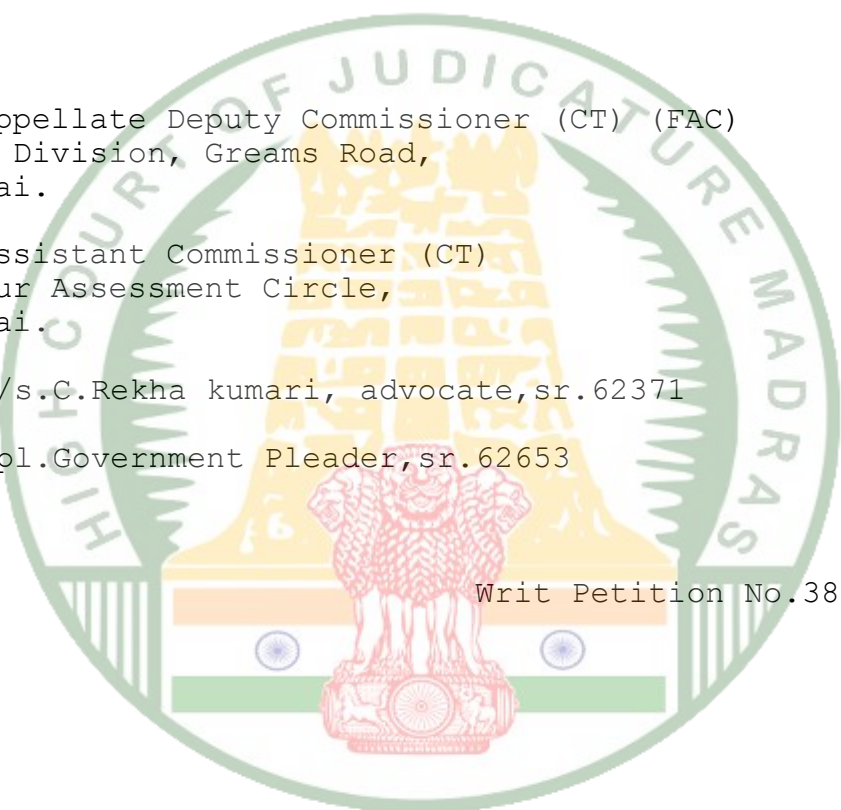
1. The Appellate Deputy Commissioner (CT) (FAC)
North Division, Greams Road,
Chennai.
2. The Assistant Commissioner (CT)
Harbour Assessment Circle,
Chennai.

+1 cc to M/s.C.Rekha kumari, advocate,sr.62371

+1 cc to Spl.Government Pleader,sr.62653

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