In the High Court of Judicature at Madras

Dated : 29.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.41806 & 41807 of 2016

Tvl.Aswin Restaurant, rep.by
its Partner Mr.K.R.V.Ganesan ...Petitioner in WP.41806/2016

Tvl.Aswins Home Baker's and
Sweets rep.by its sole proprietor
V.Rengaraj ...Petitioner in WP.41807/2016

Vs.

1.The Assistant Commissioner (CT),
the Commercial Tax Offficer,
Ariyalur Assessment Circle,
Ariyalur-621704.

2.The Appellate Deputy Commissioner
(CT), Cantonment, Trichy-1. ...Respondents in both WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus (i) to call for the records of the first respondent and quash the impugned recovery notice RC 286/ 2016/ A3/07-10-2016 and consequently forbearing the 1st respondent from taking any recovery proceedings against the petitioner herein till the disposal of the appeal AP No.17/2016 pending disposal before the 2nd respondent herein by accepting a fresh personal bond that may be executed in favour of the 1st respondent herein (WP.No.41806 of 2016) and (ii) to call for the records of the 1st respondent and quash the impugned recovery notice RC 285/2016/ A3/07-10-2016 and consequently forbearing the 1st respondent from taking any recovery proceedings against the petitioner herein till the disposal of the appeal VAT AP No.16/2016/ dated 20-1-2016 pending disposal before the 2nd respondent herein by accepting a fresh personal bond for Rs.13,94,212/- that may be executed in favour of the 1st respondent herein (WP.No.41807 of 2016).

For Petitioners : Mr.S.Sivakumar
For Respondents : Mr.K.Venkatesh, GA

COMMON ORDER

Heard Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. In these writ petitions, the petitioners have challenged the demands raised by the Assessing Officer directing payment of penalty as quantified in the respective assessment orders for the year 2012-13.

3. As against the assessment orders, the petitioner preferred appeals to the second respondent and the entire tax amount has already been paid. An order of stay was granted by the Appellate Authority in both the appeals and the stay was restricted till 28.7.2016.

4. It is stated that the petitioners are ready and willing to argue the appeal petitions. But, for want of time, the Appellate Authority has not listed the appeals for hearing. Owing to the fact that the stay orders granted by the Appellate Authority expired on 28.7.2016, the impugned demands have been raised.

5. The respondent admitted the fact that the petitioners remitted the entire tax amounts and only in respect of penalty, stay was granted by the Appellate Authority for a limited period.

6. If the Appellate Authority is not able to dispose of the appeals within a time frame, the stay ought to have been extended and the petitioner cannot be put to a disadvantageous position on account of the fact that the appeals cannot be taken up for hearing and it is not attributable to the petitioner. Therefore, till the appeals are heard and disposed of, the demands for payment of penalty should remain stayed.

7. Accordingly, the writ petitions are allowed, the impugned demands are quashed and there will be an order of stay of demand of penalty till the appeals are heard and disposed of by the Appellate Authority. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Assistant Commissioner (CT), the Commercial Tax Officer, Ariyalur Assessment Circle, Ariyalur-621704.

2.The Appellate Deputy Commissioner (CT),
Commercial Taxes, III Floor, Court Compound,
Cantonment, Trichy-1.

+1 cc to Mr.S.Sivakumar,advocate,sr.70047

+1 cc to Spl.Government Pleader,sr.70057.

ug(co)
krd 1/12

WP.Nos.41806 & 41807 of 2016