IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.42772 of 2016

and W.M.P.Nos.36685 & 36686 of 2016

Tvl.MKM Paper store
Represented by its Proprietor
No.200, Main Road, Neyvelli - 607 802. ... Petitioner

vs.

1.The Appellate Deputy Commissioner (CT),
Cuddalore.

2.The Deputy Commercial Tax Officer, (Additional)
Virudhachalam. ... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the records of the 2nd respondent in his Demand Notice in TIN 33074422865/2013-2014 dated 03.10.2016 and to quash the same as illegal and unconstitutional and further direct the 2nd respondent to refrain from demanding any tax arrears from the petitioner till the disposal of the Appeal No.189/2015 pending consideration before the 1st respondent.

For Petitioner : Mr.R.Ganesh Kanna
For Respondents : Mr.K.Venkatesh,
Government Advocate

O R D E R

1. Issue notice. Mr.K.Venkatesh, accepts notice on behalf of the respondents. Counsel for the parties consent that the writ petition can be disposed of at this stage itself.

2. By virtue of this writ petition, the petitioner has assailed the demand notice dated 03.10.2016, issued by the second respondent.

2.1. It is the petitioner's case that the demand notice emanates from an order of assessment passed on 27.01.2015, in respect of assessment year 2013-2014.

3. It is the submission of the learned counsel for the petitioner that, an appeal has been preferred against the aforementioned assessment order to the first respondent.

3.1. Furthermore, the petitioner states that, at the stage of lodging of the appeal, the petitioner had deposited 25% of the disputed tax levied via the aforementioned assessment order.

3.2. It is further submitted that the appeal could not come up for hearing, as the appellate authority, at that point in time, was not in a position.

3.3. Learned counsel for the petitioner further submits that, now, the appellate authority (i.e., the first respondent) is in position and is functioning.

4. In short, the grievance of the petitioner is that pending the appeal, the impugned order dated 03.10.2016 has been issued, followed by an order dated 21.10.2016, whereby, attachment has been directed vis-a-vis the petitioner's bank account maintained with Lakshmi Vilas Bank. For this purpose, my attention has been drawn to page 16 of the typed set of documents.

5. It is the submission of the learned counsel for the petitioner that, the petitioner is willing to deposit a further amount equivalent to 25% of the disputed tax levied by the second respondent during the pendency of the appeal.

6. Having regard to the fact that, the appeal is pending and given the circumstance that, the petitioner claims that, he has already deposited 25% of the disputed tax, I am inclined to dispose of the writ petition with the following directions:

(i) the impugned order dated 03.10.2016, shall remain stayed for a period of two (2) weeks, subject to the petitioner filing an application for stay with the first respondent within a period of one (1) week from the date of receipt of a copy of this order;

(ii) the first respondent will either take up the appeal for final hearing or in any event, the application for stay, which the petitioner proposes to file;

(iii) the first respondent shall be at liberty to pass an appropriate interim direction in respect of the application for interim stay, if any, filed by the petitioner, in the event the appeal is not taken up for hearing or till the disposal of the appeal.

7. Consequently, the writ petition and the pending applications are closed in terms of the directions issued above. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Appellate Deputy Commissioner (CT),
Cuddalore.

2.The Deputy Commercial Tax Officer, (Additional)
Virudhachalam.

+1cc to Mr.A. Ravichandran, Advocate, S.R.No.71870
+1cc to the Special Government Pleader (Taxes), S.R.No.72108

ug(CO)
md(08/12/2016)

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