BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2016

CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P(MD)Nos.18051 to 18054 of 2016

M/s.Sri Ganesh Readymades,
Rep. By its Partner
S.Saravanan ... Petitioner in all the Writ Petitions

vs.

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

2)The Commercial Tax Officer (FAC),
Karaikudi Assessment Circle,
Karaikudi. ... Respondents in all the Writ Petition

Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in S.P.Nos.19 to 22/2016 in VAT AP Nos.123 to 126/2016 dated 22.08.2016 on the file of the 1st respondent and quash the same as illegal and direct the 2nd respondent to accept the personal bond to be executed by the petitioner in lieu of security.

For Petitioner in all the W.Ps. : Mr.S.Karunakar
For Respondents in all tlhe W.Ps. : Mr.R.Karthikeyan, Additional Government Pleader

COMMON ORDER

These Writ Petitions have been filed seeking for issuance of Writ of Certiorarified Mandamus, calling for the records in S.P.Nos.19 to 22/2016 in VAT AP Nos.123 to 126/2016, dated 22.08.2016, on the file of the first respondent and quash the same with a direction to the second respondent to accept the personal bond to be executed by the petitioner in lieu of security.

2.Heard the learned counsel for the petitioner and the learned Additional Government Pleader, who takes notice for the respondents. By consent, the writ petitions are taken up for final disposal at the stage of admission.

3.The learned counsel appearing for the petitioner would submit that the respondents have collected the entire arrears of tax amount from the petitioner firm and the balance of penalty amount to be paid by the petitioner is under challenge, for which, the appellate authority directed the petitioner firm to file a Security Bond or Bank Guarantee. However, the petitioner firm is not in a position to provide the same. He would further submit that the amount demanded by the respondents is disputed one, which has to be decided by the authority concerned. Therefore, he seeks modification of the order of the appellate authority.

4.The learned Additional Government Pleader would only contend that even as per the decision of the Supreme Court unless safeguard 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.

5.In a similar occasion, the Division Bench of this Court made in W.A.(MD).No.194 of 2005, dated 13.07.2006, has held 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 20% 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."

6. In view of the earlier order and also in view of the fact that the petitioner firm has already paid the entire arrears of tax amount, this court, considering the facts and circumstances of the cases, modifies the conditions imposed by the appellate authority only insofar as to the grant of Bank Guarantee:-

(i) For the balance of penalty amount, the petitioner firm shall execute a personal bond with the appellate authority within a period of two weeks from the date of receipt of a copy of this order.

(ii) In case, if the petitioner firm fails to furnish the personal bond for the penalty amount 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.

7.The learned Additional Government Pleader appearing for the respondents would submit that the present writ petitions are filed by one S.Saravanan in the capacity of Partner of M/s.Sri Ganesh Readymades, and the personal bond for the balance of penalty amount should be executed in his personal capacity. This submission is accepted by the learned counsel for the petitioner. Therefore, personal bond for the balance of penalty amount should be executed by S.Saravanan in his individual capacity.

Accordingly, the Writ Petitions are allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar(CS I)

/True copy/

Sub Assistant Registrar

To

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

2)The Commercial Tax Officer (FAC),
Karaikudi Assessment Circle,
Karaikudi.

+1cc to Special Pleader SR.No.55181

rj2
sm:PV:05/10/2016:3P/4C

W.P(MD)Nos.18051 to 18054 of 2016
22.09.2016