BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.10.2016

CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA

W.P(MD)No.19609 of 2016

Tvl.Ambigai Air Conditioner,
Rep. By its Proprietor M.Rajasekar,
No.9C, Bye Pass Road,
Madurai. .. Petitioner

Vs.

1. The Appellate Deputy Commissioner(CT) (FAC),
Madurai (South), Madurai.

2. The Commercial Tax Officer,
Madurai Rural (South) Assessment Circle,
Madurai. .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent in S.P.No.9/2016 in VAT.203/2015 dated 06.09.2016 quash the same in so far as the condition to file Security Bond or Bank guarantee for the balance of tax and entire penalty of Rs.31,48,077/- is concerned and further direct the 1st respondent to grant stay till disposal of the petitioners appeal VAT.203/2015.

For Petitioner : Mr.A.Chandrasekaran
For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

O R D E R

This Writ Petition has been filed seeking for issuance of Writ of Certiorarified Mandamus, calling for the records in S.P.No.9/2016 in VAT.203/2015 dated 06.09.2016 quash the same in so far as the condition to file Security Bond or Bank guarantee for the balance of tax and entire penalty of Rs.31,48,077/- is concerned and further direct the 1st respondent to grant stay till disposal of the petitioners appeal VAT.203/2015.

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 petitioner has so far paid 50% of the tax demanded and for the balance 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 50% of the tax demanded, 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 tax, 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 petition is filed by one M.Rajasekar, in the capacity of Proprietor of Tvl.Ambigai Air Conditioner, 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 M.Rajasekar in his individual capacity.

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

Sd/-
Assistant Registrar(Record)

/True copy/

Sub Assistant Registrar

To

1. The Appellate Deputy Commissioner(CT) (FAC),
   Madurai (South), Madurai.
2. The Commercial Tax Officer,
   Madurai Rural (South) Assessment Circle,
   Madurai.

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