



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 11.11.2016

C O R A M

WEB COPY

THE HONOURABLE DR.JUSTICE **S.VIMALA**

Writ Petition (MD) Nos.21631 and 21632 of 2016
and
W.M.P (MD) Nos.15450 and 15451 of 2016

G.K.Sons Engineering Enterprises Pvt. Ltd.,
Represented by its Executive Director

... Petitioner in both the writ petitions

Vs.

1.The Appellate Deputy Commissioner (CT)
Office of the ADC CT Trichy,
Court Building,
Trichy - 1.

2.The Assistant Commissioner (CT)
Srirangam Assessment Circle
Trichy - 6.

... Respondents in both the writ petitions

Common Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the First Respondent in his Common proceedings in S.P.No.178 of 2016 in VAT AP.No.216 of 2016 and in S.P.No.181 of 2016 in VAT AP.219 of 2016 (in WP(MD)No.21631 of 2016) and in S.P.No.179 of 2016 in VAT AP.No. 217 of 2016 and in S.P.No.180 of 2016 in VAT AP. 218 of 2016(in WP(MD)No.21632 of 2016), quash the order therein dated 07.09.2016 and further direct that the petitioner be permitted to give a personal bond in substitution of the Bank guarantee in respect of balance amount of tax and penalty, respectively.

For Petitioner in both W.Ps.

... Mr.K.Vaitheeswaran

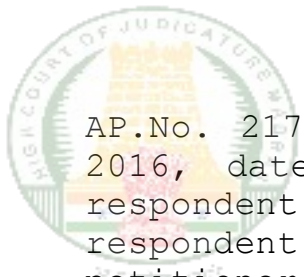
For Respondents in both W.Ps.

... Mr.R.Karthikeyan

Additional Government Pleader

C O M M O N O R D E R

These Writ Petitions have been filed seeking for issuance of Writ of Certiorarified Mandamus, calling for the records in S.P.No.178 of 2016 in VAT AP.No.216 of 2016 and in S.P.No.181 of 2016 in VAT AP.219 of 2016 and in S.P.No. 179 of 2016 in VAT



AP.No. 217 of 2016 and in S.P.No. 180 of 2016 in VAT AP. 218 of 2016, dated 07.09.2016 respectively, 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.

WEB COPY

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 50% of the disputed tax amount from the petitioner firm and the balance of tax and 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 Pleaded that the order of the appellate authority should be upheld.

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

<https://hcservices.ecourts.gov.in/hcservice/> is closed."

6. In view of the earlier order and also in view of the



fact that the petitioner firm has already paid the 50% of the disputed 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:-

WEB COPY

- (i) For the balance of tax and 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 its Executive Director, in the capacity of representative of M/s.G.K.Sons Engineering Enterprises Private Limited, and the personal bond for the balance of tax and penalty amount should be executed in her personal capacity. This submission is accepted by the learned counsel for the petitioner. Therefore, personal bond for the balance of tax and penalty amount should be executed by the Executive Director in her individual capacity.

Accordingly, the Writ Petitions are allowed to the extent indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

rj2

To

1. The Appellate Deputy Commissioner (CT)
Office of the ADC CT Trichy,
Court Building, Trichy - 1.

2. The Assistant Commissioner (CT)
Srirangam Assessment Circle, Trichy - 6.
+1cc to Mr.J.MADHU SUTHANAN, Advocate Sr.No. 68689

JAM/20.02.17 /SV-MMS/ 3P-4C