BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.11.2016
CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P(MD)No.22238 of 2016

M/s. Kurinji Traders,
By its Proprietor, M.Sahulhameed,
No.120 Tentral Nagar,
K.K.Nagar, Trichy ... Petitioner

vs.

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

2)The Assistant Commissioner (CT),
Srirangam Assessment Circle,
Trichy. ... Respondents

Petition 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.No.214/2016 in VAT AP No.261/2016 dated 06.10.2016 on the file of the first 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 : Mr.S.Karunakar
For Respondents : Mr.R.Karthikeyan,
Additional Government Pleader

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O R D E R

This Writ Petition has been filed seeking for the issuance of a Writ of Certiorarified Mandamus, calling for the records in S.P.No.214/2016 in VAT AP No.261/2016 dated 06.10.2016 on the file of the first respondent, quash the same as illegal and to direct the 2nd 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 petition is taken up for final disposal at the stage of admission.

3. The petitioner moved an application for stay of recovery of tax of Rs.70,280/- and penalty of Rs.1,47,280/- in S.P.No.214/2016. The petitioner has paid 25% of the tax demanded

at the time of filing of the Appeal.

3.1. The first respondent, who heard the stay application, directed the petitioner to pay a further sum of Rs.17,570/- on the disputed tax and to file a security bond or bank guarantee for the balance of arrears of tax as well as penalty.

3. The learned counsel appearing for the petitioner would submit that the respondents have collected the entire arrears of tax amount from the petitioner's firm; but evidence has been produced to show that only 50% of the tax demanded has been paid; the 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's firm is not in a position to provide the same.

3.1. The learned counsel would further submit that the amount demanded by the respondents is disputed one and the legality of which is to be decided by the authority concerned, therefore, the petitioner 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 passed by this Court and also

in view of the fact that the petitioner's firm claims to have paid the entire arrears of tax demanded, this court, considering the facts and circumstances of the case, modify the conditions imposed by the appellate authority only insofar as the grant of Bank Guarantee is concerned:-

(i) Towards payment 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, proof is available only to show the payment of demand of tax only to the extent of 50%, for the remaining 50% also, the guarantee shall extend.
(iii) In case, if the petitioner firm fails to furnish the personal bond for the penalty amount / balance of tax demanded (if any), as imposed by the respondents, this modification granted by this Court shall stand cancelled 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.Sahulhameed, in the capacity as Partner of M/s.Kurinji Traders, and the personal bond for the balance of penalty amount should be executed in his personal capacity.

7.1. This submission is accepted by the learned counsel for the petitioner.

7.2. Therefore, the personal bond for the balance of penalty amount / tax arrears if any, should be executed by M.Sahulhameed in his individual capacity.

8. Subject to these terms, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To
1)The Appellate Deputy Commissioner(CT), Trichy.
2)The Assistant Commissioner (CT),
Srirangam Assessment Circle, Trichy.

SRK
PSM/SKN-RSK/07.02.2017/3P/3C

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