BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2016

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THE HONOURABLE DR.JUSTICE S.VIMALA

W.P(MD)Nos.23355 and 23356 of 2016

W.P(MD)No.23355 of 2016

Tvl.Aravind Sri Lakshmi Ceramics,
Rep. by its Proprietrix: D.Mythili,
No.I & II Floor, Plot 'P',
No.9, Cettymandapam,
Kumbakonam. ... Petitioner

vs.

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

2)The Commercial Tax Officer (FAC),
Kumbakonam-III Assessment Circle,
Kumbakonam. ... 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 on the file of the 1st respondent in S.P.No.154/2016 in VAT No.87/2016 dated 15.11.2016, quash the same in so far as the condition to file Bank guarantee for the remaining balance of Rs.6,05,656/- (tax of Rs.1,39,950 + penalty of Rs.4,65,706) is concerned and for a direction to the 1st respondent to grant stay till the disposal of the petitioner's appeal, VAT No.87/2016.

For Petitioner : Mr.A.Chandrasekaran
For Respondents : Mr.V.R.Shanmuganathan
Special Government Pleader

W.P(MD)No.23356 of 2016

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For Petitioner : Mr.A.Chandrasekaran
For Respondents : Mr.V.R.Shanmuganathan
Special Government Pleader

COMMON ORDER

W.P(MD)No.23355 of 2016 has been filed seeking to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in S.P.No.154/2016 in VAT No.87/2016, dated 15.11.2016, and quash the same in so far as the condition to file Bank guarantee for the remaining balance of Rs.6,05,656/- (tax of Rs.1,39,950 + penalty of Rs.4,65,706) is concerned and for a direction to the 1st respondent to grant stay till the disposal of the petitioner's appeal, VAT No.87/2016.

1.1.W.P(MD)No.23356 of 2016 has been filed seeking to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in S.P.No.155/2016 in VAT No.88/2016 dated 15.11.2016, and quash the same in so far as the condition to file Bank guarantee for the remaining balance of Rs.11,17,015/- (tax of Rs.1,59,872 + penalty of Rs.9,57,143) is concerned and for a direction to the 1st respondent to grant stay till the disposal of the petitioner's appeal, VAT No.88/2016.

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 a portion of the disputed tax amount and penalty in both the cases and for the remaining disputed tax amount and penalty, the petitioner filed appeals along with the applications for stay of collection of the said amounts. The appellate authority granted stay, subject to the condition that the petitioner shall pay a further lumpsum of Rs.50,000/- and Rs.1,00,000/- respectively in both the cases and to file Security Bond/Bank guarantee for the remaining disputed tax amount and penalty on or before 14.12.2016. 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 orders 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.
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> 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 considering the facts and circumstances of the cases, this court modifies the conditions imposed by the appellate authority only insofar as to the grant of Bank Guarantee.

(i) For the balance amount of disputed tax and penalty, the petitioner firm in both the cases 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 balance amount of disputed tax and penalty as imposed by the respondents, this modification granted by this Court shall stand cancelled without any reference to this Court and the orders of the appellate authority will get automatically restored.

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

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

nbi

To

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

2)The Commercial Tax Officer (FAC),
Kumbakonam-III Assessment Circle,
Kumbakonam.

+1CC to Spl.Government Pleader Sr.No.79543
+1CC to Mr.A.Chandrasekaran, Advocate Sr.No.79366

GJM/RR/ME/SAR-3-25.11.17-4p-5C

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