BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2016

CORAM :

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition (MD) No.2556 of 2016

Ganesh Industries,
Rep by its Proprietor,
K.Ramesh,
No.7-3-2/3, Rani House,
AIBEA Nagar "A' Colony,
Paravai,
Madurai 625 402. ... Petitioner

Vs.

1.The Appellate Deputy Commissioner (CT),
Madurai (South)
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai 625 020.

2.The Commercial Tax Officer,
West Veli Street Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai 625 020. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent in S.P.No.64/2015 in TNVAT.AP.396/2015 dated 08.01.2016 quash the same in so far as the condition to file a Security Bond or Bank guarantee for the balance of tax and entire penalty of Rs.8,66,558/- is concerned and further direct the 1st respondent to grant stay till the disposal of petitioner's appeal in TNVAT.AP.396/2015.

For Petitioner : Mr.R.Veeramanikandan
For Respondents : Mr.R.Karthikeyan,
Additional Government Pleader.

ORDER

This writ petition has been filed challenging the order of the stay granted by the appellate authority on condition to deposit 25% of the disputed tax and to furnish bank guarantee.

2.Mr.R.Karthikeyan, learned Additional Government Pleader takes notice on behalf of the respondents. By consent, the writ petition itself is taken up for final disposal at the admission stage.

3.According to the petitioner, he has paid 25% of the disputed tax originally for preferring an appeal and thereafter, stay application was moved and he was directed to pay 25% and that amount has also been paid. Now, the petitioner is only concern with the onerous condition of directing him to furnish bank guarantee for the remaining amount, as it will amounts to double taxation.

4.In an unreported judgment of the Division Bench of this Court made in W.A.(MD)No.194 of 2005, dated 13.07.2006, this Court has stated 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."*

5.In view of the above, the order of the appellate authority is confirmed insofar as payment of 25% of disputed tax is concerned and insofar as payment of bank guarantee is concerned, it is modified to one of furnishing a personal bond for the remaining amount as well as penalty. Such personal bond, shall be furnished, within a period of four weeks from the date of receipt of a copy of this order. It is made clear that the appellate authority shall dispose of the appeal itself, as expeditiously as possible.

6.With the above modification, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

sms

To

1.The Appellate Deputy Commissioner (CT),
Madurai (South)
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai 625 020.

2.The Commercial Tax Officer,
West Veli Street Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai 625 020.

+1CC to Spl.Government Pleader Sr.No.7426

GJM/SKS/RR/SAR-I-16.2.16-3p-4c

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