BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **26.02.2016**

CORAM

THE HONOURBLE **MR.JUSTICE B.RAJENDRAN**

W.P(MD).No.4054 of 2016

Tvl. Madura Hosiery,
represented by its proprietor,
Naresh Kumar. ... Petitioner

Vs.

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

2. The Commercial Taxe Officer,
Mahal Assessment Circle,
Commercial Taxes Buildings,
Dr.Thangaraj Salai,
Madurai 625 020.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in S.P.No.2/2016 in TNVAT.168/2015, dated 27.01.2016 and quash the same insofar as the condition to file a Security Bond or Bank guarantee for the balance of tax and entire penalty of Rs.10,48,875/- is concerned and further direct the first respondent to grant stay till the disposal of the appeal filed by the petitioner in TNVAT.168/2015.

For petitioner : Mr.B.Rooban
For Respondents : Mr.Raja Karthikeyan
Additional Govt. Pleader

O R D E R

The writ petition has been filed for a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in S.P.No.2/2016 in TNVAT.168/2015, dated 27.01.2016 and quash the same insofar as the condition to file a Security Bond or Bank guarantee for the balance of tax and entire penalty of Rs.10,48,875/- is concerned and further direct the first respondent to grant stay till the disposal of the appeal filed by the petitioner in TNVAT.168/2015.

2. Mr.Raja Karthikeyan, learned Additional Government Pleader takes notice on behalf of the respondents.

3. By consent, the writ petition itself is taken up for final disposal.

4. 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 4.35% 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.

5. In an unreported Judgement 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."

6. In view of the above, the order of the appellate authority is confirmed in so far as payment of 4.35% of disputed tax is concerned and in so far 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.

7. With the above modification, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(Record)

/True copy/

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

akv

To

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

2. The Commercial Tax Officer,
Mahal Assessment Circle,
Commercial Taxes Buildings,
Dr.Thangaraj Salai,
Madurai 625 020.

+1 cc to Mr.B.Rooban, Advocate, SR No.11163

+1 cc to Special Government Pleader SR No.11369

RG.AN-MP 21.03.2016 3P/5C

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26.02.2016