IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.02.2017
CORAM:
THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
W.P.Nos.3108 to 3110 of 2017
and W.M.P.Nos.3035 to 3037 of 2017

Santha Spinning Mills (P) Ltd.,
rep by its Managing Director,
R.Chinnasamy,
119-C, Car Street,
Somanur, Tirupur. ... Petitioner in all 3 W.Ps

Vs.

1.The Assistant Commissioner (CT),
Central-II Assessment Circle,
Tirupur.

2.The Secretary,
The Tamil Nadu Sales Tax Appellate Tribunal,
Additional Bench,
Dr.Balasundaram Road,
Coimbatore - 18. ... Respondents in all 3 W.Ps

Writ petitions filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari calling for the records on the file of the second respondent herein in its CTP Nos.2/16, 3/16 & 4/16 in CTA Nos.33/16, 34/16 & 35/16 dated 29.11.2016 and quash the same in sofar it relates to furnishing of bank guarantee.

For Petitioner (in all 3 W.Ps) : Mr.N.Inbarajan

For Respondents (in all 3 W.Ps) : Mr.K.Venkatesh, Government Advocate

C O M M O N   O R D E R

1. Issue notice. Mr.K.Venkatesh, accepts notice on behalf of the respondents. With the consent of counsel for parties, the Writ Petitions are taken up for hearing and final disposal.

2. The captioned Writ Petitions have been filed against three separate orders of even date, i.e. 29.11.2016, pertaining to the assessment years 2007-08, 2008-09 and 2009-10.

3. By virtue of the impugned orders, the petitioner's application for staying the recovery of disputed penalty, qua,

each of the assessment years has been granted, subject to furnishing Bank Guarantees of value equivalent to the penalty imposed.

3.1 To be noted, the penalty imposed for the assessment year 2007-08 is Rs.2,96,742/-, whereas, for the assessment year 2008-09, the penalty imposed is Rs.2,30,709/- and insofar as the assessment year 2009-10 is concerned, the penalty imposed is Rs.2,99,677/-.

4. The petitioner's counsel submits that the entire disputed tax has been paid. It is the submission of the learned counsel for the petitioner that the direction issued, via, the impugned orders to furnish Bank Guarantees equivalent in value to the penalty imposed is onerous. It is submitted that, since, tax has been paid, the condition imposed to furnish Bank Guarantees needs to be modified to a direction to furnish Personal Bonds.

5. Mr.K.Venkatesh, who appears for the respondents says that in view of the fact that tax has been paid, it would be in order, if this Court were to modify the condition imposed in the impugned orders.

6.Having regard to the facts and circumstances of the case, in particular, the fact that the impugned orders do not consider as to whether or not the petitioner has prima facie case, I am inclined to modify the condition contained in the impugned orders, rather than remit the matter for reconsideration, given the stand taken on behalf of the respondents. This is more so as the petitioner has already paid the tax and the stay is sought only vis-a-vis, the penalty.

6.1. Accordingly, the impugned orders are modified to the extent that there shall be an order of stay of collection of the disputed penalty, subject to the petitioner furnishing Personal Bonds in respect of the penalty amount indicated for each of the assessment years in issue, within a period of two weeks from the date of receipt of a copy of the order.

7. The Writ Petitions are disposed of in terms of the aforementioned directions. Consequently, the connected miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Assistant Commissioner (CT),
Central-II Assessment Circle,
Tirupur.

2.The Secretary,
The Tamil Nadu Sales Tax Appellate Tribunal,
Additional Bench,
Dr.Balasundaram Road,
Coimbatore - 18.

+1 cc to Mr.N.Inbarajan Advocate sr 7944
+1 cc to Special Government Pleader (Taxes) sr 8117

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