IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.21364 of 2017 and
WMP.No.22319 of 2017

M/s.Gurushri Electricals
Rep. by its Partner
No.103, Govindappa Naicken Street,
Flower Bazaar, Chennai - 600 001.
Now at:-
No.72, Godown Street, Moolchand Market,
Chennai - 600 001. ...Petitioner

Vs

1.The Appellate Deputy Commissioner (CT)
Chennai (North)
3rd Floor, C.T.Building Annexe, Greams Road,
Chennai - 600 006.

2.The Assistant Commissioner (CT)
Kothawalchavadi Assessment Circle,
No.48/39, Wavoo Mansion, Rajaji Salai,
Chennai - 600 001. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in S.P.No.13/2017 in APV No.16/2017 dated 07.04.2017 and quash the same and further direct the second respondent to accept another 25% of the disputed tax and also direct the first respondent to grant an absolute stay for the balance of tax and entire penalty amount without insisting upon furnishing of Bank Guarantee, till the pending disposal of the appeal on the file of first respondent.

For Petitioner : Ms.C.Rekha Kumari

For Respondents : Mr.K.Venkatesh
Govt. Advocate

O R D E R

With the consent of the learned counsel on either side, the writ petition itself is taken up for final disposal.

2. In this writ petition, the petitioner has challenged the order passed by the Appellate Deputy Commissioner (CT), the first respondent, in a petition for stay, in S.P.No.13 of 2017, in APV No.16 of 2017, dated 07.04.2017.

3. Aggrieved by the assessment order passed by the second respondent/Assistant Commissioner (CT), under the provisions of Tamil Nadu Value Added Tax Act, 2006, for the assessment year 2014-15, the petitioner filed an appeal before the first respondent/Appellate Authority and deposited 25% of the disputed tax amount, as pre-deposit for filing the appeal. Along with the appeal, the petitioner also filed a petition for stay before the first respondent/Appellate Authority.

4. The first respondent, by the impugned order, dated 07.04.2017, granted stay for a period of six months or till the disposal of the appeal with conditions, i.e., i) directing the petitioner to pay 25% of the disputed tax amount, and insofar as the balance 50% of the tax and penalty are concerned, the petitioner was directed to furnish security in the form of a bank guarantee, on or before 08.05.2017.

5. Heard Ms.C.Rekha Kumari, learned counsel appearing on behalf of the petitioner, and Mr.K.Venkatesh, learned Government Advocate, accepting notice on behalf of the respondent, and perused the materials available on record.

6. The learned counsel for the petitioner submits that the petitioner was ready and willing to comply with the condition of payment of 25% of the disputed tax, being Rs.45,488/- and also obtained a Demand Draft dated 04.08.2017. However, there was a small delay in producing the Demand Draft before the Assessing Officer and therefore, prays that the petitioner may be granted liberty to present the Demand Draft for payment of 25% of the disputed tax and the petitioner may also be permitted to furnish bond for the balance amount, as ordered by this Court in other writ petitions.

7. As this Court, in a catena of decisions, directed the assessees to execute a personal bond in lieu of furnishing bank guarantee, is of the view that it would be sufficient if the petitioner furnishes bond for the balance 50% of the tax and penalty instead of bank guarantee.

8. Accordingly, the writ petition is partly allowed, and the condition imposed by the first respondent in the impugned order with regard to furnishing of bank guarantee is set aside, and the condition is modified to the following effect:-

i) The petitioner shall execute a personal bond for the balance tax amount and penalty for the respective assessment year, in lieu of furnishing bank guarantee, within a period of two weeks from the date of receipt of a copy of this order, and keep the bond alive till the disposal of the appeal by the first respondent/Appellate Authority and;

ii) The petitioner is permitted to present the Demand Draft, dated 04.08.2017, amounting Rs.45,488/-, being payment of 25% of the disputed tax before Assessing Officer.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Appellate Deputy Commissioner (CT)
Chennai (North)
3rd Floor, C.T.Building Annexe, Greams Road,
Chennai - 600 006.

2.The Assistant Commissioner (CT)
Kothawalchavadi Assessment Circle,
No.48/39, Wavoo Mansion, Rajaji Salai,
Chennai - 600 001.

+1cc to Ms.C.Rekha Kumari, Advocate, S.R.No.57665

W.P.No.21364 of 2017

AR(CS V)
CS/11/08/17