IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.13766 to 13768, 13795 to 13798 and
13825 to 13829 of 2017
and
W.M.P.Nos.14948 to 14953 of 2017

W.P.Nos.13766 to 13768 of 2017

M/s. Surya Service Station,
represented by Tmt.K.E.Rehamath
Tmt.K.E.Regina
Thiru.K.E.Noushad,
Tmt.K.E.Reesha
legal heirs of the then Proprietor
Late K.M.Abdul Gafoor,
Palloor,
Mahe – 673 310 ...Petitioners in all these W.Ps.

Vs.

1. The Commercial Tax Officer,
   Mahe,
   Union Territory of Puducherry.

2. The Principal District Judge,
   Puducherry.

3. The Manager,
   Indian Bank
   No.11/587 1 and 2 Cemetry road,
   Mahe.

4. The Manager,
   South Indian Bank,
   Mahe. ..Respondents in all these W.Ps.

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Common Prayer in W.P.Nos.13766 to 13768 of 2017:

Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records on the files o the second respondent herein in its I.A.Nos.871 to 873/17 in T.A.Nos.1 to 3/17 dated 15.05.2017 and quash the same insofar as it relates to condition for payment of 15% of penalty amount.

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For Petitioner : Mr.A.N.R.Jayaprathap

For Respondents : Mr.K.R.Harin,
Addl.Govt.Pleader (Puducherry)
for R1

W.P.Nos.13795 to 13798 of 2017

M/s. Mahe Beach Trading Co,
represented by Tmt.K.E.Rehamath
Tmt.K.E.Regina
Thiru.K.E.Noushad,
Tmt.K.E.Reesha
legal heirs of the then Proprietor
Late K.M.Abdul Gafoor,
Parakkal,
Mahe - 673 310 ...Petitioners in all these W.Ps.

Vs.

1. The Commercial Tax Officer,
Mahe,
Union Territory of Puducherry.

2. The Principal District Judge,
Puducherry. ..Respondents in all these W.Ps.

Common Prayer in W.P.Nos.13795 to 13798 of 2017:

Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records on the files o the second respondent herein in its I.A.Nos.874, 877, 878 & 879/17 in T.A.Nos.4, 7, 8 & 9/17 dated 15.05.2017 and quash the same insofar as it relates to condition for payment of 15% of penalty amount.

For Petitioner :Mr.A.N.R.Jayaprathap

For Respondents:Mr.K.R.Harin,
Addl.Govt.Pleader (Puducherry)
for R1

W.P.Nos.13825 to 13829 of 2017:

M/s. Mahe Auto Fuel Enterprises,
represented by Tmt.K.E.Rehamath
Proprietrix,

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Parakkal,
Mahe – 673 310 ...Petitioners in all these W.Ps.

Vs.

1. The Commercial Tax Officer,
   Mahe,
   Union Territory of Puducherry.

2. The Principal District Judge,
   Puducherry.

3. The Manager,
   Indian Bank
   No.11/587 1 and 2 Cemetry road,
   Mahe.

4. The Manager,
   South Indian Bank,
   Mahe. ..Respondents in all these W.Ps.

Common Prayer in W.P.Nos.13825 to 13829 of 2017:
Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records on the files of the second respondent herein in its I.A.Nos.875, 876, 880, 881 & 882/17 in T.A.Nos.5, 6, 10, 11 & 12/17 dated 15.05.2017 and quash the same insofar as it relates to condition for payment of 15% of penalty amount.

For Petitioner : Mr.A.N.R.Jayaprathap

For Respondents : Mr.K.R.Harin,
Addl.Govt.Pleader (Puducherry)
for R1

C O M M O N O R D E R

All these writ petitions are filed challenging the order passed by the Principal District Judge, Puducherry, being the Appellate Tribunal, wherein the petitioners have challenged the order passed by the First Appellate Authority.

2. In the impugned orders, the Tribunal, while granting stay of the disputed penalty in each case, directed payment of 15% of the said penalty amount within one month. In other words, the conditional stay granted by the Tribunal is questioned before this Court.

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3. Learned counsel for the petitioners submitted that the petitioner in each case has paid the entire tax liability without prejudice to their contentions in the Appeal and therefore, the Tribunal is not justified in further directing the payment of 15% of the penalty as a condition for granting stay, pending disposal of the appeal.

4. Learned counsel appearing for the first respondent submitted that since the appeal is filed and the petitioners have sought for stay of the penalty, the Tribunal has imposed the condition of payment of 15% of the penalty amount. Even though he submitted so, he is fair enough to admit the position that the petitioners have paid the entire tax liability and therefore, the appeal itself can be directed to be taken up for final disposal.

5. The only point for consideration before this Court is as to whether the Tribunal is justified in imposing a condition of payment of 15% of the penalty for granting stay of further proceedings pending disposal of the appeal. It is not in dispute that the said Appeal filed before the Tribunal is challenging the imposition of tax and penalty. It is also not in dispute that without prejudice to the contention, the petitioners have paid the entire tax liability even before filing the appeal. Therefore, this Court is of the considered view that the appeal itself can be taken up and decided, so that the Appellate Tribunal can come to a conclusion as to whether the very imposition of tax is justified or not and consequently, to come to a conclusion on the question of imposition of penalty as well. Therefore, considering the fact that the petitioners have already paid the entire tax liability, the Appellate Tribunal shall take up the appeal itself for final disposal and dispose of the same on merits and in accordance with law after hearing both parties. It is made clear that this Court is not expressing any view on the merits of the claim made by the petitioners as it is for the petitioners to agitate the same before the Appellate Tribunal. Accordingly, the writ petitions are allowed and the impugned orders are set aside. The appellate Tribunal shall dispose of the appeal as stated supra within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

vsi

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To

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+3 Ccs to Mr.A.N.R.Jayaprathap , Advocate sr 42856

W.P.Nos.13766 to 13768,
13795 to 13798 and
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sp(04/07/2017)

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