In the High Court of Judicature at Madras

Dated : 05.9.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.23896 to 23899 of 2017
& WMP.Nos.25149 to 25152 of 2017

Tvl.Million's Fashions, rep.by
its Proprietor, Chennai-1. ...Petitioner

Vs

The Appellate Deputy Commissioner
(CT), North, Chennai-6. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the respondent respectively in S.P.Nos.32/2017, 33/2017, 34/2017 and 35/2017 dated 01.8.2017 and quash the same.

For Petitioner : Mr.Aditya Reddy
For Respondent : Mrs.Narmadha Sampath, SGP

COMMON ORDER

Mrs.Narmadha Sampath, learned Special Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is aggrieved by the orders passed by the respondent in the stay petitions pending appeals filed against the orders of assessment under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the

years 2006-07 to 2009-10. At the time when the petitioner lodged the appeals before the respondent, the condition of mandatory pre-deposit of 25% of the disputed tax has been complied with by the petitioner. In the appeals, the petitioner moved petitions for grant of stay of collection of the remaining amount of disputed tax and penalty. The respondent, by the impugned orders, granted an order of stay for a period of six months, subject to the condition that the petitioner should pay another 25% of the disputed tax apart from furnishing bank guarantee for the balance of tax and entire penalty to the satisfaction of the Assessing Officer. Those orders have been put to challenge in these writ petitions.

3. The purpose for insisting upon the pre-deposit or imposing condition while granting stay especially in matters of this nature is only to safeguard the interests of the Revenue. If, ultimately, the assessee loses the appeals, the Department will not be put to great prejudice to recover the balance amount demanded.

4. In the instant case, considering the factual position, which has been pleaded in the appeal petitions as well as the fact that the petitioner sought for a declaratory relief before this Court by filing W.P.No.14370 of 2017 praying for a declaration to declare Entry 77A of Schedule IV to the Tamil Nadu Value Added Tax Act, 2006 as unconstitutional to the extent that the benefit of exemption under Section 15 of the said Act is not extended to imported cotton fabrics, this Court is of the view that the interests of the Revenue will be safeguarded if the petitioner is directed to execute a

personal bond for the balance of disputed tax and entire penalty, as the petitioner has already paid 25% of the disputed tax for each of the assessment years. The above observation is made after taking into consideration the peculiar facts and circumstances of the case and taking note of the fact that the petitioner is a small dealer.

5. Accordingly, the writ petitions are partly allowed and the impugned orders are modified with a direction that instead of payment of another 25% of the disputed tax and furnishing bank guarantee for the balance of disputed tax and entire penalty, in each case, the petitioner shall execute a personal bond for the balance of 75% of the disputed tax and entire penalty to the satisfaction of the Assessing Officer. If the petitioner complies with the above condition, the demand for payment of balance tax and entire penalty shall remain stayed. The respondent shall dispose of the appeals as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the above WMPs are closed.

05.9.2017

Internet : Yes

To
The Appellate Deputy Commissioner (CT), North, Chennai-6.

RS

T.S.SIVAGNANAM,J

RS

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