IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.25784 of 2017

Tvl. Mohanlal Jewellers Chennai Private Limited,
rep. by its Director,
Nos.139 & 141, N.S.C. Bose Road,
Chennai 600 079. ... Petitioner

vs.

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

2. The Assistant Commissioner (CT), FAC,
Moore Market Assessment Circle,
No.48/39, I Floor, Wavoo Mansion,
Rajaji Salai, Chennai 600 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent in S.P.No.45/2017 in APV.56/2017, dated 07.09.2017 and quash the same and further direct the first respondent to grant an absolute stay for the balance of tax and entire penalty amounting Rs.1,70,694/-, without insisting upon furnishing of bank guarantee, till the pending disposal of the appeal on the file of the first respondent.

For Petitioner : Ms.C.Rekha Kumari

For Respondent : Mr.K.Venkatesh,
Government Advocate (Taxes)

O R D E R

By consent of the learned counsel on either side, this Writ Petition is taken up for final disposal.

2. The petitioner has come up with this Writ Petition seeking to quash the order dated 07.09.2017 passed by the first respondent in S.P.No.45/2017 in APV.56/2017 and further direct

the first respondent to grant an absolute stay for the balance of tax and entire penalty amounting Rs.1,70,694/-, without insisting upon furnishing of bank guarantee, till the pending disposal of the appeal on the file of the first respondent.

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, the petitioner filed an Appeal before the first respondent/Appellate Authority and deposited 25% of the disputed tax amount towards pre-condition deposit for filing the Appeal. Along with the Appeal, the petitioner also filed a petition for stay before the first respondent/Appellate Authority. The first respondent/Appellate Authority, by the impugned order, dated 07.09.2017, granted absolute stay till the disposal of the Appeal with a condition, directing the petitioner to pay a further amount of Rs.26,898/- being another 25% of the disputed tax and file Bank Guarantee to the satisfaction of the Assessing Officer for the balance of Tax and penalty of Rs.1,70,694/- in the prescribed manner in fulfilment of the conditions stipulated in Rule 14(15) read with the proviso to Section 52(4) of the Tamil Nadu Value Added Tax Act, 2006 on or before 09.10.2017.

4. It is not in dispute that the petitioner has already paid 25% of the disputed tax at the time of filing the Appeal, and further paid 25% of the disputed tax, as per the direction issued by the first respondent/Appellate Authority. In toto, the petitioner has paid 50% of the disputed tax. Insofar as balance amount and penalty are concerned, in respect of which, the first respondent has directed the petitioner to furnish bank guarantee, the petitioner finds it as onerous, which has resulted in filing of this Writ Petition, seeking to quash the said condition.

5. Heard Ms.C.Rekha Kumari, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents.

6. As this Court, in a catena of decisions, directed the assessees to execute a personal bond in lieu of furnishing bank guarantee, this Court directs the petitioner to furnish a bond for the balance 50% of the tax and penalty instead of Bank Guarantee. Accordingly, the condition imposed by the first respondent in the impugned order with regard to furnishing of bank guarantee is set aside and modified to the following effect:

> "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."

7. In the result, the Writ Petition is partly allowed, as indicated above. No costs. Consequently, connected W.M.P.No.27207 of 2017 is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To:
1. The Appellate Deputy Commissioner (ST) (North),
   C.T. Building Annexe,
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   Chennai 600 006.

2. The Assistant Commissioner (CT), FAC,
   Moore Market Assessment Circle,
   No.48/39, I Floor, Wavoo Mansion,
   Rajaji Salai, Chennai 600 001.

+1 Cc to Ms.C.Rekha Kumari, Advocate sr 71078.
+1 Cc to Spl. Govt. Pleader(Taxes) sr 71182

W.P.No.25784 of 2017

MSM(CO)
SP(03/11/2017)