IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.10.2017

CORAM

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.Nos.26681 to 26686 of 2017
and
W.M.P.Nos.28409 to 28414 of 2017

M/s.Ashva Motors
Rep. by its Proprietor V.John Ashok Kumar
... Petitioner in all WPs

Vs.

1. The Appellate Deputy Commissioner (CT)(FAC)
Trichy

2.The Assistant Commissioner (CT)
Ariyalur
... Respondents in all Wps

Common Prayer:Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records, in S.P.No.161 of 2017 in A.P. No.274 of 2017, SP.NO.162 of 2017 in A.P.NO.275 of 2017, SP.NO.163 of 2017 in A.P.NO.276 of 2017,SP.NO.164 of 2017 in A.P.NO.277 of 2017,SP.NO.165 of 2017 in A.P.NO.278 of 2017, SP.NO.166 of 2017 in A.P.NO.279 of 2017, respectively dated 07.09.2017 on the file of the 1st respondent and to quash the same as illegal and direct the 2nd respondent to accept the personal bond to be executed by the petitioner in lieu of security.

For Petitioner : M/s.S.Bhargavi
for M/s.S.Karunakar

For Respondents : Mr.K.Venkatesh
Government Advocate

COMMON ORDER

Heard M/s.S.Bhargavi, the learned counsel appearing for M/s.S.Karunakar, the learned counsel for the petitioner and Mr. K.Venkatesh, the learned Government Advocate, accepting notice on behalf of the respondents.

2. The petitioner has filed Appeals against the orders of assessment passed by the second respondent, under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as ''TNVAT Act''). The Appeals have been taken on file by the first respondent, in A.P.Nos.274 to 279 of 2017. At the time of presenting the Appeals, the petitioner has complied with the mandatory pre-deposit of 25% of the disputed tax for each of the assessment years. The petitioner sought for stay of the remaining amount of tax and penalty, by filing Stay Petitions in S.P. Nos.161 to 166 of 2017. The first respondent/Appellate Authority has passed an impugned order, dated 07.09.2017, by directing the petitioner to pay further 25% of the disputed tax, and to furnish bank guarantee for the remaining amount of tax and penatly. The petitioner has complied with the first condition and paid further 25% of the disputed tax, vide demand draft, dated 25.09.2017. The petitioner is aggrieved by the condition imposed on them to furnish bank guarantee for the remaining amount.

3. In my considered view, since already 50% of the disputed tax has been paid by the petitioner, this is suffice to safeguard the interest of the Revenue, and further safeguard can be made, by directing the petitioner to furnish a bond to the satisfaction of the second respondent for the remaining amount. This is so, because, the petitioner is a registered dealer on the file of the second respondent, and carrying on business within his jurisdiction. One more issue, which I wish to point out is that, the first respondent has granted an order of interim stay for a period of six months or till the disposal of the Appeals, whichever is earlier. This is an error committed by the first respondent, in granting stay order, which has been set aside by this Court, in several cases. The order of stay should continue till the disposal of the Appeal. If the first respondent restricts the order of stay, then, he should hear and decide the Appeal, within such period, if it is not possible, then, the stay should continue till the disposal of the Appeal. Otherwise, the Appeal itself would become infructuous. Therefore, proper wording that should have been adopted by the first respondent is to grant an order of stay for a period of six months or till the disposal of the Appeal, whichever is later.

4. With this clarification, the Writ Petitions are partly allowed, and the condition imposed by the first respondent in the impugned orders 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 Appeals by the first respondent/Appellate Authority.

5. In the result, the Writ Petitions are partly allowed, as indicated above. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS IV )

/true copy/

Sub Asst. Registrar

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To.
1. The Appellate Deputy Commissioner (CT)
Trichy

2.The Assistant Commissioner (CT)
Ariyalur

+ 6 cc to M/s.S.Karunakar, Advocate,SR.73191

+ 1 cc to The Special Govt.Pleader, SR.73526

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CP(CO)
NR 13/10/2017