IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.10.2017

Coram:

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

W.P.No. 26718 of 2017
and
W.M.P.No. 28451 of 2017

M/s. Madanlal Steels & Forgings (P) Ltd.,
represented by its Director,
No.7, Morrison 4th Street, Alandur,
Chennai - 600 016.
...Petitioner

Versus

1. The Appellate Deputy Commissioner (ST) East,
   3rd Floor, C.T.Building Annexe,
   No.1, Greams Road,
   Chennai - 600 006.

2. The Commercial Tax Officer,
   Alandur Assessment Circle,
   Chennai - 600 016.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of first respondent in S.P.No.84/2017 in APV No.112/2017 and quash the impugned order, dated 18.09.2017 and further direct the first respondent to grant an absolute stay of collection of the balance of disputed tax and for the entire disputed penalty in respect of the Assessment year TIN 2009-10 without imposing any further condition of furnishing of security in the form of immovable property or bank guarantee pending disposal of the appeal on his files.

For Petitioner : Mr. P. Rajkumar
For Respondents : Mr. K. Venkatesh,
Government Advocate

O R D E R

Heard Mr. P. Rajkumar, the learned counsel appearing for the petitioner and Mr. K. Venkatesh, the learned Government Advocate, accepting notice on behalf of the respondents.

2. The petitioner has filed Appeal against the order 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 Appeal has been taken on file by the first respondent, in A.P.V.No.112 of 2017. At the time of presenting the Appeal, the petitioner has complied with the mandatory pre-deposit of 25% of the disputed tax. The petitioner sought for stay of the remaining amount of tax and penalty, by filing Stay Petitions in S.P. No.84 of 2017. The first respondent/Appellate Authority has passed an impugned order, dated 18.09.2017, by directing the petitioner to pay further 25% of the disputed tax, and to furnish bank guarantee for the remaining amount of tax and penalty. The petitioner has complied with the first condition and paid further 25% of the disputed tax, vide demand draft, dated 09.10.2017. The petitioner is aggrieved by the condition imposed on them to furnish bank guarantee for the remaining amount of tax and penalty.

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/Assessing Officer 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 Appeal, 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 catena of decisions. 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, and 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 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 assessment year 2009-10, 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.

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

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

True Copy

Sub-Assistant Registrar

sd

To

1. The Appellate Deputy Commissioner (ST) East,
   3rd Floor, C.T.Building Annexe,
   No.1, Greams Road,
   Chennai - 600 006.

2. The Commercial Tax Officer,
   Alandur Assessment Circle,
   Chennai - 600 016

+1 Cc to Mr.P. Rajkumar, advocate sr 73173.
+1 Cc to Spl. Govt. Pleader sr 73528

W.P.No. 26718 of 2017

NMI(CO)
SP(13/11/2017)