In the High Court of Judicature at Madras

Dated : 07.11.2017

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM

W.P.No.28316 of 2017

T.A.Traders, rep.by its
Proprietor Akbar Moshinbai ...Petitioner

Vs

1.The Appellate Deputy Commissioner
(CT), Chennai (North), No.1,
Greams Road, III Floor, Chennai-6.

2.The Commercial Tax Officer,
Broadway Assessment Circle,
No.199, Thambu Chetty Street,
Chennai-1. ...Respondents

PETITION 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 SP.No.54/2017 in APV 62/2017, quash the same and modify the order dated 05.10.2017 in so far as the condition of further payment of 25% and furnishing of bank guarantee for the balance of disputed tax pending disposal of the appeal.

For Petitioner : Mr.R.Kumar
For Respondents : Mr.K.Venkatesh, GA

ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved by the condition imposed by the first respondent - Appellate Authority while granting stay in an appeal filed by the petitioner in APV 62/2017 against the assessment order dated 22.8.2017 for the year 2014-15 under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

3. Earlier, several similar writ petitions were disposed of by this Court by directing the dealers to pay further 25% of the disputed tax and for the remaining amount, the dealers were

directed to execute a personal bond instead of furnishing bank guarantee. This indulgence was granted bearing in mind the interests of the Revenue and at the same time, the plight of the dealers.

4. The learned counsel for the petitioner has canvassed the case on merits and submitted that though the Assessing Officer admitted in the assessment proceedings that the petitioner filed Form I for the interstate sales to the Special Economic Zone, she ought to have assessed the turnover as 'zero rated' sales. Instead, she wrongly assessed the turnover as an exempted turnover. The petitioner also placed reliance on the decision of this Court in the case of Interfit Techno Products Limited Vs. Principal Secretary and Commissioner of Commercial Taxes [reported in (2015) 81 VST 589]. The Appellate Authority - the first respondent herein passed the impugned order keeping in mind the prima facie case and hardship of the assessee and directed the petitioner to pay another 25% of the disputed tax after taking note of the fact that the petitioner already paid 25% of the disputed tax and also directed furnishing of bank guarantee for the balance tax of Rs.1,69,929/-.

5. In so far as the condition of furnishing of bank guarantee is concerned, this Court is of the view that it would suffice if the petitioner executes a personal bond for the said amount instead of furnishing bank guarantee.

6. The learned counsel for the petitioner has pleaded that the petitioner is a very small dealer and with great difficulty, they had already remitted 25% of the disputed tax. According to the learned counsel, another 25% of the amount being a very large sum, the petitioner's financial condition does not permit them to immediately pay the said amount.

7. I have heard the learned Government Advocate on the above submission.

T.S.SIVAGNANAM,J
RS

8. Considering the peculiar facts and circumstances of the case and taking note of the fact that the turnover of the petitioner is very minimal, this Court is inclined to grant some indulgence to the petitioner by making a small modification in the impugned order.

9. Accordingly, the writ petition is partly allowed and the petitioner is directed to pay another 25% of the disputed tax to the tune of Rs.84,965/- (Rupees eighty four thousand nine hundred and sixty five only) within a period of 60 days from the date of receipt of a copy of this order and for the balance amount of tax i.e Rs.1,69,929/- (Rupees one lakh sixty nine

thousand nine hundred and twenty nine only), the petitioner shall execute a personal bond and keep the same alive till the appeal is disposed of by the first respondent. On complying with the twin conditions, the demand for the balance tax as assessed by the Assessing Officer shall remain stayed till the disposal of the appeal by the first respondent. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

To
1.The Appellate Deputy Commissioner (CT),
Chennai (North), No.1,
Greams Road, III Floor, Chennai-6.

2.The CTO, Broadway Assessment Circle,
No.199, Thambu Chetty St., Ch-1.

+1cc to Mr.R.KUMAR Advocate, S.R.No. 78704

WP.No.28316 of 2017

TR(04/12/2017)