IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19869 of 2017
and
W.M.P.No.21464 of 2017

M/s.Arihant Batteries Pvt.Ltd.,
rep.by its Managing Director,
No.106/2, Sydenhams Road, Periamet,
Chennai-600 003. .. Petitioner

Vs

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

2.The Assistant Commissioner (CT),
Vepery Assessment Circle,
No.10, Greams Road, Chennai-600 006. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in SP.No.34/17 in AP No.36/2017-CST, dated 03.07.2017 and quash the same and further direct the first respondent to grant an absolute stay for the balance of tax and entire penalty amount 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 Respondents : Mr.S.Kanmani Annamalai, AGP

ORDER

Heard Ms.C.Rekha Kumari, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, appearing for the respondents.

2.In this Writ Petition, the petitioner has challenged the order passed by the Appellate Deputy Commissioner (CT), Chennai (Central), the first respondent, in a petition for stay, in S.P.No.34 of 2017, in AP No.36/2017-CST dated 03.07.2017.

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, for the assessment year 2013-14, the petitioner filed an appeal before the first respondent/Appellate Authority and deposited 25% of the disputed tax amount, as pre-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 03.07.2017 granted absolute stay till the disposal of the Appeal with conditions, i.e., i) directing the petitioner to pay 25% of the disputed tax amount, and insofar as the balance 50% of tax and penalty are concerned, the petitioner was directed to furnish security in the form of a bank guarantee, on or before 02.08.2017. 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.

4.As this Court, in a catena of decisions, directed the assessees to execute a personal bond in lieu of furnishing bank guarantee, is of the view that it would be sufficient if the petitioner furnishes bond for the balance 50% of the tax and penalty instead of bank guarantee. Accordingly, the present 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:-

> 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.

5.In the result, the writ petition is partly allowed, as indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

KM

To

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

2.The Assistant Commissioner (CT),
Vepery Assessment Circle,
No.10, Greams Road, Chennai-600 006.

+ 1 CC TO M/S. C. REKHA KUMAR, ADVOCATE SR.56346

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SAI(co)
EU 28.08.17