



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)No.3107 of 2017

M/s.Kala Marketing,
represented by its Partner R.Thileep Kumar,
15-4-915, A.K.R.Mill Compound,
Boothipuram Road, P.C.Patti,
Theni

... Petitioner

vs.

1)The Appellate Deputy Commissioner(CT) (FAC)
Madurai(South),
Madurai.

2.The Assistant Commissioner(CT),
Theni-I Assessment Circle,
Theni.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, calling for the records in S.P.No.1 of 2017 in TNVAT No.257/2016, dated 24.1.2017 on the file of the first respondent and to quash the same as illegal and to direct the second respondent to accept the personal bond to be executed by the Petitioner in lieu of security.

For Petitioner : Mr.S.Karunakar
For Respondents : Mr.R.Karthikeyan
Addl. Govt. Pleader

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, calling for the records in S.P.No.1 of 2017 in TNVAT No.257/2016, dated 24.1.2017 on the file of the first respondent and to quash the same as illegal and to direct the second respondent to accept the personal bond to be executed by the Petitioner in lieu of security.

2.Heard the learned counsel for the petitioner and the learned Additional Government Pleader, who takes notice for the respondents. By consent, this writ petition is taken up for final disposal at the stage of admission.



3. The learned counsel appearing for the petitioner would submit that for the penalty amount of Rs.5,99,672/- arrived at by the respondents, the petitioner preferred appeal and the appellate authority while granting stay, directed the petitioner firm to file a Security Bond or Bank Guarantee for the penalty amount. However, the petitioner firm is not in a position to provide the same. He would further submit that the amount demanded by the respondents is disputed one, which has to be decided by the authority concerned. Therefore, he seeks modification of the order of the appellate authority.

4. The learned Additional Government Pleader would only contend that even as per the decision of the Supreme Court unless safeguard in respect of payment in question is made, the revenue of the Government will be at stake. Therefore, the order of the appellate authority holds good.

5. In a similar occasion, the Division Bench of this Court made in W.A(MD)No.194 of 2005, dated 13.07.2006, has held as follows:-

"2. When the appellant preferred a statutory appeal before the first respondent, as a condition precedent for filing an appeal, the appellant deposited 25% of the tax assessed. It is stated that as per the interim orders of the first respondent, the appellant has also paid another 20% of the assessed tax which is under challenge before the first respondent.

3. In such circumstances, we feel that the interim order of stay granted by the first respondent can be directed to be continued subject to the appellant furnishing a personal bond for the remaining tax amount as well as penalty.

4. Subject to such modification, the Writ Appeal stands disposed of. The order of the learned Single Judge is also modified to the above extent. Such personal bond shall be furnished by the appellant within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

6. In view of the earlier order and also considering the facts and circumstances of the case, this court modifies the conditions imposed by the appellate authority only insofar as to the grant of Bank Guarantee:-

- (i) For the penalty amount of Rs.5,99,672/- the petitioner firm, shall execute a personal bond with the appellate authority within a period of two weeks from the date of receipt of a copy of this order.
- (ii) In case, if the petitioner firm fails to furnish



the personal bond within the above-said time limit, this modification granted by this Court shall stand cancelled without any reference to this Court and the order of the appellate authority will get automatically restored.

WEB COPY

7. Accordingly, the Writ Petition is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

1) The Appellate Deputy Commissioner (CT) (FAC)
Madurai (South),
Madurai.

2. The Assistant Commissioner (CT),
Theni-I Assessment Circle,
Theni.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 10099
+ 1 CC TO Mr. S. KARUNAKAR, ADVOCATE IN SR No. 9873

VSN

TE/PM-PN/SAR-III : 07/03/2017 : 3P/5C

W.P (MD) No. 3107 of 2017
22.02.2017