BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.03.2017
CORAM :
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
W.P(MD)No.3554 of 2017



TVL Sri Jewellers,
Rep by its Partner S.Saravanan
No.10, Meenakshi Koil Street (1st Floor),
Madurai. ... Petitioner

vs.

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

2. The Commercial Tax Officer,
Vengalakadai Street Assessment Circle,
Madurai. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in S.P.No.29/2016 in VAT AP No.265/2016 dated 31.1.2017 on the file of the 1st respondent and 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 : Mr.S.Karunakar
For Respondents : Mr.N.S.Karthikeyan
Additional Government Pleader

ORDER

The prayer in this writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records in S.P.No.29/2016 in VAT AP No.265/2016 dated 31.1.2017 on the file of the 1st respondent and 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.

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

3.The learned counsel appearing for the petitioner would submit that for the tax and penalty amount of Rs.7,78,389/- 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 cases, this court modifies the conditions imposed by the appellate authority only insofar as to the grant of Bank Guarantee:-

(i) For the tax and penalty amount of Rs.7,78,389/-, 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 abovesaid time limit, this modification granted by this Court shall stand cancelled without any reference to this Court and the orders of the appellate authority will get automatically restored.

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



Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

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

2. The Commercial Tax Officer,
Vengalakadai Street Assessment Circle,
Madurai.
+1cc to M/s. S.KARUNAKAR Advocate in SR. No.11699

NBI
JS/RR/9/03/2017/3P-4C

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