



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)Nos.478 to 483 of 2017

W.P(MD)No.478 of 2017

M/s.Krishna Corporation,
Represented by its Partner Suba Ramanathan,
No.60 (82) Sub-Jail Road,
Trichy.

... Petitioner

vs.

1)The Appellate Deputy Commissioner(CT),
Trichy.

2)The Assistant Commissioner (CT) (FAC),
Mailamchandai II Circle,
Trichy.

...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.242/2016 in AP.No.288/2016, S.P.No.240/16 in AP.No.289/16, SP.No.244/2016 in AP.No.290/2016, S.P.No.241/16 in A.P.No.291/16, S.P.No.243/2016 in A.P.292/16 and S.P.No.245/2016 in A.P.293/2016 respectively, dated 21.11.2016 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.

(In all W.Ps)

For Petitioner

: Mr.S.Karunakar

For Respondents

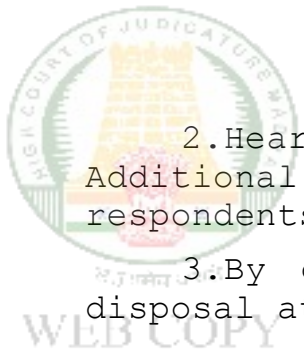
: Mr.R.Karthikeyan

(in all Wps)

Additional Government Pleader

COMMON ORDER

These writ petitions have been filed for issuance of a Writ of Certiorarified Mandamus, calling for the records in S.P.Nos.242, 240, 244, 241, 243 and 245/2016 in AP.Nos.288, 289, 290, 291, 292 and 293/2016 respectively, dated 21.11.2016, 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.

3. By consent, these writ petitions are taken up for final disposal at the stage of admission.

4. The learned counsel appearing for the petitioner would submit that for the disputed amount of tax, tax along with penalty, arrived at by the respondents, in the respective cases, the petitioner preferred appeals and the appellate authority while granting stay, directed the petitioner firm to file a Security Bond or Bank Guarantee for the disputed 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.

5. 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.

6. 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

Consequently, connected miscellaneous petition is closed."



7. 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:-

WEB COPY

- (i) For the disputed amount, the petitioner firm in all the cases, shall execute a personal bond with the appellate authority within a period of three 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 orders of the appellate authority will get automatically restored.
- (iii) The appellate authority shall take up the matter on day to day basis and shall not adjourn the proceedings beyond five working days and shall record the reasons for adjournment under whose request, the matter has been adjourned.

Accordingly, the Writ Petitions are allowed to the extent indicated above. No costs.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1)The Appellate Deputy Commissioner(CT),
Trichy.

2)The Assistant Commissioner (CT) (FAC),
Mailamchandai II Circle,
Trichy.

+6 cc to MR.S.KARUNAKAR, Advocate SR.Nos.2318 to 2323

W.P(MD)Nos.478 to 483 of 2017
10.01.2017

SMA/CM-MSA/03.02.2017:3P/9C