IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.08.2018
CORAM:
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
W.P.No.21980 of 2018
and
W.M.P.No.25780 of 2018

M/s. Siva Sakthi & Co.,
No.34, Spur Tank Road,
Chetpet, Chennai - 600 031.,
Rep by its Accounts Manager. ..Petitioner

Vs

1.The Appellate Deputy Commissioner, [CT], [FAC]
Chennai [Central],
CT New Building, [Annexe]
III Floor, Chennai - 600 006.

2.The Assistant Commissioner (C.T),
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai - 600 031. ..Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari or any other Writ or Order in the nature or Writ calling for the records in respect of impugned order in S.P.No.81/2018 in A.P.VAT 107/2018 dt.24.07.2018 directing the petitioner herein to pay a further sum of Rs.2,59,678/- [Rupees Two Lakhs Fifty Nine Thousand Six Hundred and Seventy Eight only] being 25% of the disputed amount of taxes due, and to file valid security in the form of Bank Guarantee obtained from any of the Nationalised Banks executed in favour of the Second respondent herein for the balance tax amount of Rs.5,19,355/- [Rupees Five Lakhs Nineteen Thousand Three Hundred and Fifty Five only] and penalty of Rs.5,19,356/- [Rupees Five Lakhs Nineteen Thousand Three Hundred and Fifty Six only] totaling Rs.10,38,711/- [Rupees Ten Lakhs Thirty Eight Thousand Seven Hundred and Eleven only] on or before 23.08.2018 and quash the same.

For Petitioner : Mr.A.Thirumaran

For Respondents: Mr.K.Hariharan,
Additional Government Pleader (Taxes)
for R1 and R2

O R D E R

Mr.K.Hariharan, Additional Government Pleader (Taxes) takes notice for the respondents. By consent of parties, the main writ petition is taken up for final disposal, since the issue involved in this case lies in narrow compass.

2. The petitioner is aggrieved against the conditional order passed by the first respondent Appellate Authority while granting stay pending disposal of the appeal.

3. Heard both sides.

4. The petitioner is an Assessee before the second respondent. An order of assessment was passed in respect of the Assessment Year 2010-2011 on 16.05.2018, levying tax and imposing penalty. Challenging the said order of Assessment, the petitioner preferred statutory appeal before the first respondent. Pending disposal of the appeal, the petitioner sought for stay of recovery of tax and penalty imposed by the Assessing Authority. The first Appellate Authority granted stay subject to the condition that the petitioner pay a sum of Rs.2,59,678/- being the 25 percent of the disputed amount of tax and with further direction to give Bank guarantee for the balance amount of tax of Rs.5,19,355/- and penalty of Rs.5,19,356/-.

5. It is stated by the learned counsel for the petitioner that 25% of the amount of tax as directed by the first Appellate Authority has been paid. However, the present writ petition is filed only by expressing some difficulty in complying with the direction to furnish the Bank guarantee in respect of the balance tax amount and penalty to the tune of Rs.10,38,711/-.

6. Learned counsel for the petitioner submitted that instead of furnishing Bank guarantee for the balance tax amount and penalty, the petitioner would further pay another 25% of the disputed tax amount and give personal bond for the balance tax due and penalty.

7. Learned Additional Government Pleader appearing for the respondents submitted that if the interest of the revenue is protected, he may not have any serious objection.

8. This Court has already considered similar request and modified the conditional order thereby permitting the respective petitioners therein to furnish personal bond for the balance amount. One such order made by this Court in W.P.Nos.15859 to 15862 of 2017 dated 23.06.2017 is placed before me. Since the petitioner has already paid 25 percent of the disputed tax amount and is also coming forward to pay another 25 percent of the disputed tax amount, this Court is of the view that interest

of the both parties will be protected, if the conditional order passed by the first respondent is modified in the following terms: (a) The petitioner shall pay further 25 percent of the disputed amount of tax due before the Assessing Authority, within a period of two weeks from the date of receipt of a copy of this order.

(b) For the balance tax due and penalty, the petitioner shall furnish personal bond before the second respondent.

(c) Thus, the order of stay granted by the first Appellant Authority is modified to the extent stated above.

(d) In all other aspects, the order of stay stands.

No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

krk/vsi

To

1.The Appellate Deputy Commissioner, [CT], [FAC]
Chennai [Central],
CT New Building, [Annexe]
III Floor, Chennai - 600 006.

2.The Assistant Commissioner (C.T),
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai - 600 031.

+1cc to Mr. A.Thirumaran, Advocate, S.R.No. 59173 & 59993
+2cc to the Special Government Pleader(Taxes), S.R.No. 59418

W.P.No.21980 of 2018

SSV(CO)
GN(18/09/2018)