

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.22319 of 2018
and
W.M.P.No.26149 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

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in respect of the impugned order in S.P.No.82/2018 in A.P.VAT 108/2018 dt.24.07.2018 of the first respondent, directing the petitioner herein to pay a further sum of Rs.4,49,618/- [Rupees Four Lakhs Forty Nine Thousand Six Hundred and Eighteen 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.8,99,233/- [Rupees Eight Lakhs Ninety Nine Thousand Two Hundred and Thiry Three only] and penalty of Rs.8,99,235/- [Rupees Eight Lakhs Ninety Nine Thousand Two Hundred and Thirty Five only] totaling Rs.17,98,468/- [Rupees Seventeen Lakhs Ninety Eight Thousand Four Hundred and Sixty Eight only] on or before 23.08.2018 and quash the same.

For Petitioner : Mr.A.Thirumaran

For Respondents : Mr.M.Hariharan,
Additional Government Pleader (Taxes)

O R D E R

Mr.M.Hariharan, learned 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 2011-2012 on 16.05.2018, levying tax and imposing penalty. Challenging the said order of assessment, the petitioner preferred a 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.4,49,618/- being 25% of the disputed amount of tax and with further direction to give Bank guarantee for the balance amount of tax of Rs.8,99,233/- and penalty of Rs.8,99,235/-.

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.17,98,468/-.

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 WP.No.21980 of 2018 dated 29.08.2018 is placed before me. Since the petitioner has already paid 25% of the disputed tax amount and is also coming forward to pay another 25% of the disputed tax amount, this Court is of the view that the interest of 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% 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.

Accordingly, the writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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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 SR.No.59565

+1cc to Government Pleader SR.No.59845

W.P.No.22319 of 2018

GMV (12/09/2018)