IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.22199 of 2019
&
W.M.P.No.21480 of 2019

M/s.S.P.P.Silks
Represented by S.Karthikeyan
Partner
D.No.531/535, Eswaran Koil Street
Erode - 638 001 .. Petitioners

Vs.

1. The Appellate Deputy Commissioner (ST)
Erode

2.The Assistant Commissioner (ST)
Mettur Road Circle
Erdoe .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records on the files of the first respondent in S.P.No.17/2019 in A.P.VAT No.54/2019 dated 22.5.2019 and quash the same as being invalid and illegal insofar as the order directs the petitioners to file bank guarantee and further permit the petitioners to file personal bond instead of bank guarantee.

For Petitioner : Mr.V.Srikanth

For Respondent : Mr.V.Haribabu
Additional Government Pleader

ORDER

Mr.V.Srikanth, learned counsel on record for writ petitioner is before this Court. Mr.V.Haribabu, learned Additional Government Pleader, accepts notice on behalf of both the respondents.

2.With consent of learned counsel on both sides, main writ petition itself is taken up, heard out and is being disposed of.

3. Considering the narrow scope on which the instant writ petition now turns, suffice to say that subject matter arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' for brevity.

4.A revised Assessment Order came to be passed against the writ petitioner with regard to the Assessment Year 2017-18.

5.Aforesaid revised Assessment Order was carried in appeal to the jurisdictional Appellate Deputy Commissioner (who is the Appellate Authority) by way of an appeal under Section 51 of TNVAT Act. Payment of 25% of disputed tax is a pre-condition for filing the appeal and the same has been duly paid.

6.Pending statutory appeal, writ petitioner prayed for stay of the impugned revised assessment order.

7. Appellate Authority (second respondent before this Court) passed an order, wherein there was a direction to pay further 25% of disputed tax and furnish bank guarantee for the remaining 50%. To be noted, this is with regard to disputed tax and penalty. It is pointed out that 25%, which is a precondition for the appeal has been paid and another 25% has also been deposited. Instant writ petition has been filed complaining that one limb of the condition i.e., condition to furnish bank guarantee for balance 50% is onerous. It is submitted that writ petitioner, being a partnership firm, one of the partners of the firm Mr.S.Karthikeyan, who is the deponent of the affidavit filed in support of the instant writ petition on hand, may be permitted to furnish personal bond with regard to the balance 50%.

8. Adverting to an order made by a Hon'ble single Judge of this Court, being order dated 04.04.2018 made in W.P.Nos.7790 and 7791 of 2018 and W.M.P.Nos.9704 and

97805 of 2018 therein, it is submitted that such a request was acceded to in a similar matter.

9. There is no disputation or disagreement before this Court between the learned counsel for writ petitioner and learned Revenue counsel that instant writ petition is similar to the aforesaid writ petitions i.e., W.P.Nos.7790 and 7791 of 2018 and there is also no disputation or disagreement that the order dated 04.04.2018 made by another Hon'ble single Judge of this Court has not been carried in appeal.

10. Therefore, this writ petition is disposed of by modifying the impugned order, being order dated 22.05.2019 made in S.P.Nos.17 of 2019 in A.P.VAT No.54/2019 with regard to that limb of the order which directs bank guarantee to be furnished for balance 50% of disputed tax and penalty. That limb will now be stand substituted by a direction that one of the partners of the petitioner, who is also the deponent of the affidavit filed in support of instant writ petition, Mr.S.Karthikeyan, carrying on business at D.No.531/535 Eswaran Kovil Street, Erode - 638 001 will furnish a personal bond for the balance 50% of disputed tax. The same shall be done within a fortnight from the date of receipt of a copy of this order and the second respondent Appellate Authority shall thereafter dispose of the statutory appeal as expeditiously as possible and in any event within eight weeks from the date of such bond being furnished in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Appellate Deputy Commissioner (ST)
Erode

2.The Assistant Commissioner (ST)
Mettur Road Circle
Erdoe

+1cc to Mr.V.Srikanth , Advocate SR.No. 64516
+1 cc to Spl Government Pleader Sr.No. 65019

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A.SK(22/08/2019)