



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.25198, 25201 of 2021
and
W.M.P.Nos.26571 & 26574 of 2021

(Through Video Conferencing)

M/s.Moa Engineering Private Limited,
Represented by its Director,
Mrs.LeeMyunghee,
Flat No.11, Block No.1,
Swathi Tezas, Padmini Garden Mount,
Nandambakkam, Chennai - 600 089.
Now at Plot No.184/2B, Sirumangadu Village,
Sunguvarchatiram post, Sriperumbudur Taluk,
Kanchipuram - 602 106.

... Petitioner in both W.Ps

Vs

1. The Deputy Commissioner (CT) (Appeal),
Chennai-II, C.T.Building Annexe,
3rd Floor, Greams Road, Chennai - 600 006.
2. The Assistant Commissioner (CT),
Alandur Assessment Circle, Chennai.

... Respondents in both W.Ps

Prayer in W.P.No.25198 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of first respondent in S.P.No.26 of 2021 in AP/97/VAT/2021 and quash the impugned order dated 26.10.2021 and further direct the first respondent to grant an absolute stay of collection of the disputed penalty in respect of the Assessment Year TIN No.33500844541/2010-2011 without imposing any further condition of furnishing security in the form of immovable property or bank guarantee for the disputed penalty pending disposal of the appeal on his files.

Prayer in W.P.No.25201 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of first respondent in



S.P.No.27 of 2021 in AP/97/VAT/2021 and quash the impugned order dated 26.10.2021 and further direct the first respondent to grant an absolute stay of collection of the disputed penalty in respect of the Assessment Year TIN No.33500844541/2011-2012 without imposing any further condition of furnishing security in the form of immovable property or bank guarantee for the disputed penalty pending disposal of the appeal on his files.

For Petitioner : Mr.C.Sivasubramanian
(In both W.Ps)

For Respondents : Mr.D.Ravichander
(In both W.Ps) Special Government Pleader

COMMON ORDER

Mr.D.Ravichander, learned Special Government Pleader takes notice on behalf of the respondents.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

3. The petitioner has challenged the Assessment Order dated 28.03.2013 passed by the Assistant Commissioner (CT), the second respondent demanding a tax of Rs.1,20,656/- and imposing a penalty of Rs.7,45,194/-.

4. It is the case of the petitioner that at the time of filing of appeals before the first respondent the Deputy Commissioner (CT) (Appeal) under Section 51 of the TNVAT Act, 2006, the petitioner has paid sum of Rs.30,164/- being 25% of the tax confined vide order dated 28.03.2013 in TIN/33500844541/2011-2012. The petitioner is therefore sought for waiver of balance amount of tax and penalty in the respective appeals.

5. By the impugned orders dated 26.10.2021, the Deputy Commissioner (CT) (Appeal), the first respondent has directed the petitioner to deposit another sum of Rs.31,064/- being balance of 25% of the tax on or before 25.11.2021 and for the balance amount of Rs.60,328/- and penalty of Rs.7,45,194/-, a Bank Guarantee from any nationalized bank. Subject to such compliance, the order states that there will be a stay of the recovery of the order.

6. The petitioner has also filed another writ petition for the Assessment Year 2010-2011 wherein, the Assistant Commissioner (CT) has demanded tax amount of Rs.81,556/- and has imposed penalty of Rs.84,644/-. It is submitted that the



petitioner has also deposited the entire tax amount. However, in the impugned orders, the first respondent has asked the petitioner to furnish Bank Guarantee for penalty. The impugned orders seeking to deposit a sum of Rs.30,164/- and Bank Guarantee of balance tax and penalty of Rs.60,328/-, Rs.84,644/-, Rs.7,45,194/- appears to be onerous inasmuch as the entire amount would remain block with the Department and would not be available to the petitioner for day-to-day business. Further, in the impugned orders, there is no discussion on the merits or demerits of the case before directing the petitioner to deposit balance 25% of the disputed tax of Rs.31,064/- while calling upon the petitioner to furnish Bank Guarantee for the balance amount and on the penalty imposed in the impugned orders before the Appellate Commissioner.

7. Considering the overall facts and circumstances of the case, these Writ Petitions are disposed by directing the petitioner to pay 10% of the balance amount of tax and penalty over and above amount already deposited by the petitioner within a period of four weeks from the date of receipt of a copy of this order. On such deposit, there shall be a stay of all recovery proceedings. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner (CT) (Appeal),
Chennai-II, C.T.Building Annexe,
3rd Floor, Greams Road, Chennai - 600 006.
2. The Assistant Commissioner (CT),
Alandur Assessment Circle, Chennai.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.61063

+1cc to the Special Government Pleader (Taxes), S.R.No.62011

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NR(CO)
SU(11/01/2022)