(1985) 07 MAD CK 0006

In the Madras High Court

Case No : Writ Petition No. 7822 of 1985

Mr. T.M. Abdul Guffoor and Co., Madras APPELLANT

Vs

The Appellate Assistant Commissioner, (Commercial Taxes), Madras RESPONDENT

Date of Decision : 26-07-1985

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 31(5)

Citation : (1985) 07 MAD CK 0006

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : R.L. Ramani, for the Appellant; R. Lok Priya for the Addl. Govt. Pleader, for the Respondent

Judgement

Nainar Sundaram, J.—The petitioner has suffered an order of regular assessment. As against that, it has preferred an appeal and pending the

appeal stay was sought for. It is further stated that a bank guarantee for the entire disputed tax has been furnished. By the impugned order the

respondent has chosen to direct only payment of the tax dues in four installments. Mr. R. Lok Priya, Additional Government Pleader, represents

the respondent. The prayer in the writ petition is for the issue of a writ of certiorarified Mandamus to quash the order, dated 20th May, 1985 of

the respondent and further to direct him to grant absolute stay of collection of sales tax. In support of this prayer, Mr. R.L. Ramani, learned

counsel for the petitioner, draws my attention to the pronouncement of Natarajan, J. in Dolton Printers Pvt. Ltd. v. State of Tamil Nadu, (1985) 58

STC 137. When the bank guarantee is there, that will provide ample safeguard for the revenue. In the said circumstances, to call upon the petitioner to pay the very disputed tax is not only harsh but also not a judicial and a proper exercise of the power of discretion reserved for the

authority like the respondent under the proviso to S. 31(5) of the Tamil Nadu General Sales Tax Act, 1959. The present impugned order only

discloses a mechanical exercise of power without resorting to the appropriate consideration on the question of stay. This obliges me to interfere in

writ jurisdiction. Accordingly, I direct that the bank guarantee already furnished by the petitioner shall hold good provided it is kept alive during the

pendency of the appeal in question before the respondent and the impugned order is hereby quashed. No costs.

2. In spite of the pronouncement of this Court referred to above, I find that the authorities like the respondent resort to passing such mechanical

orders and this constrains parties like the petitioner to approach this Court in writ jurisdiction. It is high time that the highest in the hierarchy to the

authorities looked into the matter and gave appropriate instructions to the concerned to adhere to the principles enunciated by this Court so as to

avoid parties rushing to this Court for redress and relief.