

(1989) 09 MAD CK 0038

In the Madras High Court

Case No : Writ Petition No's. 11392 and 11396 of 1989

Southern Power Systems (P.) Ltd.

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 14-09-1989

Acts Referred:

Citation : (1989) 09 MAD CK 0038

Hon'ble Judges : Venkataswami, J

Bench : Single Bench

Advocate : Nandha Rajagopalan, for the Appellant; Haja Nazirudeen, Government Advocate (Taxes), for the Respondent

Judgement

Venkataswami, J.—When these two writ petitions came up for admission on 22nd August, 1989, notice of motion was ordered. Mr. Haja Nazirudeen, learned Government Advocate (Taxes), has entered appearance and, on instructions, has argued the matter.

2. These two writ petitions are directed against the orders of the Appellate Assistant Commissioner declining to consider the applications for stay on the ground that the assessee has not filed any security bond before the assessing officer, before moving the applications for stay before the appellate authority. A perusal of section 31 and rule 31(2) does not show that there is any condition precedent which directs the assessee to furnish a security bond before the assessing officer, before the assessee moves the appellate authority for stay. In the absence of any statutory power demanding such security bond to be furnished before the application for stay is considered by the appellate authority, I am unable to sustain the orders of the Appellate Assistant Commissioner. Accordingly, the writ petitions are allowed and the orders of the Appellate Assistant Commissioner in both these writ petitions are set aside and the is directed to consider the applications for stay on merit and in accordance with law, in particular the reported decision of this Court in Sri Balaji Trading Company Vs. Deputy Commercial Tax Officer, Mettur Road Circle, Erode and

Another, . No costs.

3. Writ petitions allowed.