IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.10888 to 10894 of 2015
And
M.P.Nos.1 to 1 of 2015

M/s.Sri Vijayalakshmi Agencies
Represented by its Proprietor
No.1/25, Naidu Colony
Venkateswara Nagar
Ramapuram,
Chennai - 600 089. ...Petitioner in all WPs

Vs.

1. The Appellate Deputy Commissioner (CT),
   Chennai South Division,
   III Floor, C.T.Building Annexe,
   No.1, Greams Road, Chennai - 600 006

2. The Commercial Tax Officer,
   Ramapuram Assessment Circle,
   No.1-A, Ekambara Naicker Industrial Estate
   Alapakkam
   Chennai - 600 116. ...Respondents in W.P.No.10888 to 10894 of 2015

Prayer in W.P.Nos.10888 to 10894 of 2015:

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the first respondent in his proceedings in S.P.No.43 to 49 of 2015 in AP.No.32 of 2015 - VAT, quash the order therein dated 17.03.2015 and further direct the first respondent may be permitted to give a personal bond in substitution of the bank guarantee in respect of the amount of balance of taxes and penalty.

For Petitioner : Mr.K.Vaitheeswaran
For Respondents: Mr.S.Manoharan Sundaram
Additional Government Pleader(Taxes)

COMMON ORDER

All these Writ Petitions have been filed by M/s.Sri Vijayalakshmi Agencies, represented by its Proprietor, challenging the impugned order passed by the first respondent in S.P.Nos.43 to 49 of 2015 in VAT AP.Nos.32 to 38 of 2015 respectively, dated 17.03.2015, wherein the first respondent directed the petitioner to pay another 25% of the disputed tax amount and again directed the petitioner to furnish the bank guarantee to the fullest satisfaction of the Assessing Officer for the balance amount of Tax and Penalty valid for a period of minimum six months from a Nationalised or Scheduled Bank before the Assessing Officer on or before 16.04.2015.

2.Challenging the second condition imposed against the petitioner, the learned counsel appearing for the petitioner would submit that the approach adopted by the first respondent clearly shows that he has failed to appreciate Section 24(2) of the TNGST Act and Section 42 of the TNVAT Act read with Section 9 of the CST Act. A joint reading of this provision clearly shows that there has been an automatic charge created on the assets of the petitioner and therefore, there is no necessity for a direction to file security for the balance amount of taxes. That apart, at the time of filing an appeal, the petitioner has also deposited 25% of the disputed tax amount and again when the stay application has been taken up, the first respondent directed the payment of another 25% of the disputed tax amount. That amount was also paid. While so, the petitioner is not in a position to file a Bank Guarantee for the balance amount of tax and penalty.

3.This Court in a similar occasion, while considering an identical circumstances, dealing with a similar impugned order, modified only the second condition to one of directing the petitioner to execute the personal bond instead of furnishing bank guarantee for the balance amount of tax and penalty.

4.In view of the fact that this Court has already considered the similar prayer and following the similar order, these writ petitions stand disposed of by confirming the first condition and replacing the second condition to one of directing the petitioner to execute a personal bond for the balance amount of tax and penalty, as there has been an automatic charge created in view of Section 24(2) of the TNGST Act and Section 42 of the TNVAT Act read with Section 9 of the CST Act. The petitioner is directed to execute the personal bond within a period of 10 days from the date of receipt of a copy of this order.

5.These writ petitions are disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.
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s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Appellate Deputy Commissioner (CT),
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   Alapakkam
   Chennai - 600 116.

+ 1 cc to Special Govt.Pleader (Taxes) SR 20798

+ 7 ccs to Mr.K.Vaitheeswaran,Advocate SR 20868

msm(co)
prk12/5

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