IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.Nos.13085 to 13089 of 2015
and
M.P.Nos.1 to 1 of 2015

M/s. Rajeswari Agencies ... Petitioner in all WPs

vs.

1. The Appellate Deputy
Commissioner (CT) (East),
Commercial Tax Building,
Fort Round Road, Vellore - 632 001.

2. The Commercial Tax Officer,
Arcot. ...Respondents in all WPs

PRAYER in all WPs. : These Writ Petitions have been filed under section 226 of the Constitution of India to issue an order of Writ of Certiorarified Mandamus, to call for the records of the first respondent in his proceedings in SP. No.51 of 2015 in APV No.160 of 2015, SP. No.39 of 2015 in APV No.98 of 2015, SP. No.53 of 2015 in APV No.162 of 2015, SP. No.54 of 2015 in APV No.163 of 2015 and SP. No.55 of 2015 in APV No.164 of 2015, quash the order therein dated 20.03.2015, 2.03.2014 respectively and further direct the first respondent to permit the petitioner to give a personal bond in substitution of the bank guarantee in respect of the amount of balance of taxes and pass further orders.

For Petitioners in all WPs : Mr.K.Vaitheeswaran

For Respondent in all WPs : Mr.A.N.R.Jayaprathap Government Advocate (T)

COMMON ORDER

The petitioner has come to this Court challenging the second condition of the stay orders passed by the Appellate Deputy

Commissioner (CT) East, Chennai, the first respondent herein, in SP. No.51 of 2015 in APV No.160 of 2015, SP. No.39 of 2015 in APV No.98 of 2015, SP. No.53 of 2015 in APV No.162 of 2015, SP. No.54 of 2015 in APV No.163 of 2015 and SP. No.55 of 2015 in APV No.164 of 2015 dated 20.03.2015 to quash and consequently direct the first respondent to grant an absolute stay for the balance of tax and the entire penalty amount without insisting upon furnishing of bank guarantee, till the disposal of the appeals, pending on the file of the first respondent.

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 under Section 42(2) of the TN VAT Act and Section 24(2) of the TNGST Act, 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, directing the petitioner to execute the personal bond instead of furnishing bank guarantee for the balance amount of tax and penalty.

4. Mr. A.N.R. Jaya Prathap, learned Government Advocate (Taxes) taking notice for the respondents, agreeing to the said submission, requested this Court to direct the petitioner to execute personal bonds to that effect, within a week's time.

5. In view of the fact that this Court has already considered the similar prayer and following the same, these writ petitions stand disposed of by confirming the first condition and replacing the second condition, 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. Accordingly, the petitioner is directed to execute the personal bond within a period of ten days from the date of receipt of a copy of this order.

6. With this direction, all the writ petitions are disposed of, at the stage of admission itself. Consequently, the connected miscellaneous petitions are closed. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

avr

To

1. The Appellate Deputy Commissioner (CT) (East),
Commercial Tax Building,
Fort Round Road, Vellore - 632 001.

2. The Commercial Tax Officer,
Arcot.

5 cc to Mr.K.Vaitheeswaran ,Advocate, SR.No.23954
1 cc to Government Pleader,Sr.No.24158

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pmk.19.5.2015