IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2015

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.13363 to 13369 of 2015
and
M.P.Nos.1 to 1 of 2015

M/s. Emily Agencies,
Represented by its Proprietor ... Petitioner in all the Wps

Vs.

1. The Appellate Deputy Commissioner (CT)
Commercial Tax Building,
Vellore.

2. The Commercial Tax Officer,
Arakonam Assessment Circle,
Arakonam. ... Respondents in all the WPs

PRAYER in all the 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.27 of 2015 in APV No.99 of 2015, SP. No.28 of 2015 in APV No.100 of 2015, SP. No.29 of 2015 in APV No.101 of 2015, SP. No.30 of 2015 in APV No.102 of 2015, SP. No.31 of 2015 in APV No.103 of 2015, SP. No.32 of 2015 in APV No.104 of 2015 and SP. No.33 of 2015 in APV No.105 of 2015 and quash the order therein dated 25.02.2015 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 penalty.

For Petitioner in all WPs : Mr.K.Vaitheeswaran

For Respondents in all WPs : Mr.V.Haribabu, Additional Government Pleader (T)

COMMON ORDER

The petitioner has come to this Court challenging the impugned orders passed by the Appellate Deputy Commissioner (CT), Vellore, the first respondent herein, in SP. No.27 of 2015 in APV No.99 of 2015, SP. No.28 of 2015 in APV No.100 of 2015, SP. No.29 of 2015 in APV No.101 of 2015, SP. No.30 of 2015 in APV No.102 of 2015, SP. No.31 of 2015 in APV No.103 of 2015, SP. No.32 of 2015 in APV No.104 of 2015 and SP. No.33 of 2015 in APV No.105 of 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 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. Mr. V. Haribabu, learned Additional Government Pleader (Taxes) takes notice for the respondent, agreed to the said submission and 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 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 two weeks 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)
   Commercial Tax Building,
   Vellore.

2. The Commercial Tax Officer,
   Arakonam Assessment Circle,
   Arakonam.

W.P.Nos.13363 to
13369 of 2015
&
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MG(CO)
Eu 20.05.15