

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.13450 of 2015
and
M.P.No.1 of 2015

M/s.Rajeswari Agencies
No.1A, Police Line Street,
Arcot.

... Petitioner

vs.

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

2. The Commercial Tax Officer,
Arcot.

.... Respondents

PRAYER : This Writ Petition has 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.56 of 2015 in APV No.165 of 2015, quash the orders therein dated 20.03.2015 and 22.04.2015 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 and pass further orders.

For Petitioner : M/s.Radhika Chandrsekhar

For Respondents: Mr.V.Haribabu

Additional Government Pleader (T)

ORDER

The petitioner has come to this Court challenging the impugned order passed by the Appellate Deputy Commissioner (CT) East, Chennai, the first respondent herein, in SP. No.56 of 2015 in APV No.165 of 2015, quash the orders therein dated 20.03.2015 and 22.04.2015 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.

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 respondents, and 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 similar order, these writ petition 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. Therefore, 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, the writ petition is disposed of. Consequently, the connected miscellaneous petition is closed. No order as to costs.

avr

-s/d-

Assistant Registrar

True Copy

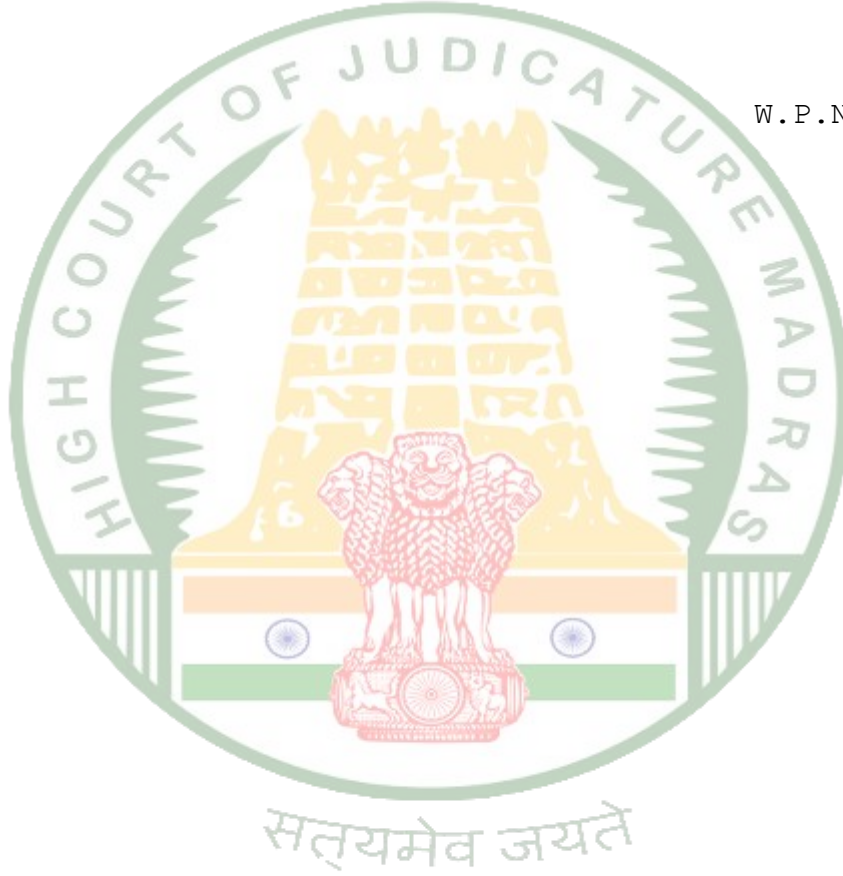
Sub-Assistant Registrar

To

1. The Appellate Deputy
Commissioner (CT) (East),
Commercial Tax Building,
Fort Round Road, Vellore - 632 001.
 2. The Commercial Tax Officer,
Arcot.
- + 1 cc to Mr.K.Vaitheeswaran, Advocate sR 24609

mp(co)
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