IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.13690 to 13694 of 2015

M/s S.K.Electricals
(represented by its Partner
Abishek Fomra)
No.220 (Old No.137)
Govindappa Naicken Street
Chennai 600 001 .. Petitioner in all the writ petitions

-vs-

1. The Assistant Commissioner (CT)(FAC)
NSC Bose Road Assessment Circle
48/39, Rajaji Salai
Wavoo Mansion 2nd Floor
Chennai 600 001

2. The Appellate Deputy Commissioner (CT) Appeals
Chennai North Division
3rd Floor, Commercial Taxes Annexe Building
No.1, Greams Road
Chennai 600 006 .. Respondents in all the writ petitions

Petitions under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records on the files of the second respondent herein in his S.P.Nos.71, 72, 73, 74 & 75 of 2015 in VAT AP.Nos.77, 78, 79, 80 & 81 of 2015 dated 9.4.2015 and quash the same in so far as it relate to the direction to furnish security in the form of bank guarantee for a sum of Rs.27,39,244/- (Tax of Rs.13,69,622/- and penalty of Rs.13,69,622/-), Rs.30,44,752/- (Tax of Rs.15,22,376/- and penalty of Rs.15,22,376/-), Rs.19,61,656/- (Tax of Rs.9,80,828/- and penalty of Rs.9,80,828/-), Rs.23,91,324/- (Tax of Rs.11,95,662/- and penalty of Rs.11,95,662/-) & Rs.26,316/- (Tax of Rs.13,158/- and penalty of Rs.13,158/-) respectively, on or before 8.5.2015.

For Petitioner :: Mr.N.Inbarajan
For Respondents :: Mr.V.Haribabu
Additional Government Pleader

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ORDER

All these writ petitions have been filed by M/s S.K.Electricals represented by its partner, challenging the impugned orders passed by the second respondent in S.P.Nos.71, 72, 73, 74 & 75 of 2015 in VAT AP.Nos.77, 78, 79, 80 & 81 of 2015 dated 9.4.2015 in respect of the assessment years 2009-10, 2010-11, 2011-12, 2012-13 & 2013-14 respectively, wherein the second respondent directed the petitioner to pay another 25% of the disputed tax amount and again directed the petitioner to furnish bank guarantee to the fullest satisfaction of the assessing officer for the balance amount of tax and penalty from a nationalized or scheduled bank before the assessing officer on or before 8.5.2015.

2. Challenging the second condition imposed against the petitioner, the learned counsel appearing for the petitioner submitted that the approach adopted by the second respondent clearly shows that he has failed to appreciate Section 24(2) of the Tamil Nadu General Sales Tax Act and Section 42 of the Tamil Nadu Value Added Tax Act read with Section 9 of the Central Sales Tax Act. A joint reading of these provisions would clearly show 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 had already deposited 25% of the disputed tax amount and again when the stay application was taken up, the second respondent again 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 bank guarantee for the balance amount of tax and penalty.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader taking notice on behalf of the respondents.

4. Admittedly, in the present cases, the petitioner had paid 50% of the disputed tax amount. This Court, in identical circumstances, while taking uniform stand, has been directing the similarly placed persons to execute only personal bond instead of bank guarantee for the balance amount of tax and penalty.

5. In view of the above, these writ petitions are disposed of by modifying only the second condition to one of directing the petitioner to execute 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 Tamil Nadu General Sales Tax Act and Section 42 of the Tamil Nadu Value Added Tax Act read with Section 9 of the Central Sales Tax Act. The petitioner is directed to execute the personal bond within a period of two weeks from the date of receipt

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of a copy of this order. Consequently, M.P.Nos.1 of 2015 are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

ss

To

1. The Assistant Commissioner (CT)(FAC)
NSC Bose Road Assessment Circle
48/39, Rajaji Salai
Wavoo Mansion 2nd Floor
Chennai 600 001

2. The Appellate Deputy Commissioner (CT) Appeals
Chennai North Division
3rd Floor, Commercial Taxes Annexe Building
No.1, Greams Road
Chennai 600 006

1cc to Mr.N.Inbarajan, Advocate Sr.24369

W.P.Nos.13690 to 13694 of 2015

TEJ(CO)
Eu 20.05.15

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