IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.14058 to 14063 of 2015

M/s.Perfint Health Care Pvt. Ltd.,
rep., by its Authorised Signatory,
Mr.K.Guruswamy .. Petitioner in all the writ petitions

-vs-

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

2. The Commercial Tax Officer
Nandhanam Assessment Circle,
No.46, Greenways Road,
R.A.Puram, Nandhanam,
Chennai 600 028. .. Respondents in all the writ petitions

Petitions under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent in his proceedings in S.P.Nos.185 to 190 of 2015 in A.P.V.T.Nos.157 to 162 of 2015, dated 31.03.2015, quash the same 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 disputed taxes and penalty.

For Petitioner :: Mr.D.Siva
for M/s.Arul Selvam Associates

For Respondents :: Mr.V.Haribabu
Addl. Government Pleader (Taxes)

COMMON ORDER

These writ petitions have been filed by M/s.Perfint Health Care Pvt. Ltd., represented by its Authorised Signatory, Mr.K.Guruswamy, challenging the impugned orders passed by the first respondent in S.P.Nos.185 to 190 of 2015 in A.P.V.T.Nos.157 to 162 of 2015, dated 31.03.2015, in respect of the assessment years from 2008-09 to 2013-14, wherein, the first respondent directed the petitioner to pay another 25% of the disputed tax and again directed the petitioner to furnish bank guarantee to the satisfaction of the assessing officer for the balance of tax and penalty on or before 30.04.2015, for the grant of stay.

2. Challenging the second condition imposed against the petitioner, the learned counsel appearing for the petitioner submitted that the approach adopted by the first 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 bank guarantee for the balance amount of tax and penalty. That apart, at the time of filing appeals, the petitioner had already deposited 25% of the disputed tax and again when the stay applications were taken up, the first respondent again directed the payment of another 25% of the disputed tax, which was also paid by the petitioner. While so, the petitioner is not in a position to file bank guarantee for the balance amount of tax and penalty, due to financial constraints.

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 in respect of the assessment years in question. This Court, in identical circumstances, 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 within a period of two weeks, from the date of receipt of a copy of this order, 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, till the disposal of the appeals. Consequently, M.P.Nos.1 & 2 of 2015 are closed. No costs.

-Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

skm

To

1. The Appellate Deputy Commissioner (CT)(FAC)
   Chennai Central Division,
   III Floor, C.T.Building Annexe,
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   Chennai 600 006.

2. The Commercial Tax Officer
   Nandhanam Assessment Circle,
   No.46, Greenways Road,
   R.A.Puram, Nandhanam,
   Chennai 600 028.

+ 6 ccs to M/S Arulselvan Associatges, Advocate
  (SR.33109 to 33114 & 33116)
+ 1 cc to the special Government Pleader, High Court Madras
  (SR 33621)

W.P.Nos.14058 to 14063 of 2015

GP (CO)
YJ 24.07.15