IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.16416 to 16423 of 2015

Tvl.Shriram Transport Finance Company Limited
rep. by its Assistant General Manager Mr.S.Krishnan
4, Lady Desikachary Road
Chennai 600 004 ...Petitioner in all the writ petitions

-vs-

1. The Appellate Deputy Commissioner (CT) (East)
   Station: CT Building Annexe 3rd Floor
   Greams Road
   Chennai 600 006

2. Assistant Commissioner (CT)
   Alwarpet Assessment Circle
   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, to call for the records of the first respondent in S.P.Nos.210, 211, 212, 213, 214, 215, 216 & 217 of 2015 in APV Nos.207, 208, 209, 210, 211, 212, 213 & 214 of 2015 and quash the impugned orders dated 13.5.2015 and further direct the first respondent to grant an absolute stay of collection of the balance of disputed tax and for the entire disputed penalty in respect of the assessment years TIN 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 & 2013-14 without imposing any further condition of furnishing of security in the form of immovable property or bank guarantee pending disposal of the appeals on his files.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.S.Manoharan Sundaram
Additional Government Pleader(T)

ORDER

These writ petitions have been filed by M/s Shriram Transport Finance Company Limited represented by its Assistant General Manager, challenging the impugned orders passed by the first respondent in S.P.Nos.210, 211, 212, 213, 214, 215, 216 & 217 of 2015 in APV Nos.207, 208, 209, 210, 211, 212, 213 & 214 of 2015, dated 13.5.2015 in respect of the assessment years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 & 2013-14, wherein the first respondent directed the petitioner to pay another 25% of the disputed tax, except for the assessment year 2006-07, 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 12.6.2015 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, except for the assessment year 2006-07, which was also paid by the petitioner on 8.6.2015. 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 more than 50% of the disputed tax in respect of the assessment year 2006-07 and had paid 50% of the disputed tax in respect of the remaining assessment years. 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 of 2015 are closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Appellate Deputy Commissioner (CT) (East)
Station: CT Building Annexe 3rd Floor
Greams Road
Chennai 600 006

2. The Assistant Commissioner (CT)
Alwarpet Assessment Circle
Chennai 600 028

+1cc to Mr.R.Sivaraman, Advocate, S.R.No.28439
+1cc to the Special Government Pleader(T), S.R.No.28149

W.P.Nos.16416 to 16423 of 2015

GGK(CO)
CA(16/07/2015)