IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.17209 to 17211 of 2015

M/s Jayapriya Builders
rep by its Partner - C.R.Jayasankar
Chennai-Kumbakonam Road
Neyveli Arch Gate
Neyveli-1
Cuddalore District ...Petitioner in all the writ petitions

-vs-

1. The Commercial Tax Officer
Panruti (Rural)
Panruti
Cuddalore District

2. The Appellate Deputy Commissioner (CT)(FAC)
Cuddalore 607 001
Cuddalore District ...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 file of the second respondent in his proceedings in S.P.Nos.36, 37 & 38 of 2015 respectively, in A.P.Nos.121, 122 & 123 of 2014 respectively, dated 23.03.2015 and quash the same in so far as it directs the petitioner to furnish security for the balance of disputed taxes and penalty due for the assessment years 2010-11, 2011-12 & 2012-13 respectively, under the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mrs.R.Hemalatha

For Respondents : Mr.S.Kanmani Annamalai
Addl.Government Pleader (Taxes)

ORDER

These writ petitions have been filed by M/s Jayapriya Builders represented by its Partner Mr.C.R.Jayasankar, Neyveli challenging the impugned orders passed by the second respondent in S.P.Nos.36, 37 & 38 of 2015 in A.P.Nos.121, 122 & 123 of 2015 dated 23.03.2015, in respect of the assessment years 2010-11, 2011-12 & 2012-13, wherein the second 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 23.4.2015 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 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 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 second respondent again directed the payment of another 25% of the disputed tax, which was also paid by the petitioner on 9.6.2015. 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(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Commercial Tax Officer
   Panruti (Rural)
   Panruti
   Cuddalore District

2. The Appellate Deputy Commissioner (CT)(FAC)
   Cuddalore 607 001
   Cuddalore District

3 CCs to Mrs.R.Hemalatha, Advocate SR.No. 29606

1 CC to the Spl.Government Pleader (T), SR.No. 29702

W.P.Nos.17209 to 17211 of 2015

BR (CO)
PSI (22.06.2015)