IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.20248 and 20249 of 2015
and
M.P.Nos.1 and 1 of 2015

Rathna Cafe rep. by its Partner
Lokesh Gupta, Triplicane,
Chennai ... Petitioner in both the W.Ps

-vs-

1. The Commercial Tax Officer,
   Thiruvallikeni Assessment Circle,
   Chennai - 28.

2. The Appellate Deputy Commissioner
   (CT) (East),
   C.T. Building Annexe 3rd Floor,
   Greams Road, Chennai. ... Respondents in both the W.Ps

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 second respondent herein in his S.P.Nos.250 and 251 of 2015 in APV Nos.245 and 246 of 2015 dated 03.06.2015 and quash the same while directing the petitioners to furnish personal bond for the amount of Rs.36,72,545/- and Rs.31,94,815/- of the balance of tax and penalty (2012-13) and (2013-14) respectively.

For Petitioner : Mr.N.Inbarajan
in both the W.Ps

For Respondents : Mr.S.Kanmani Annamalai,
Addl. Govt. Pleader
in both the W.Ps

COMMON ORDER

Both these writ petitions have been filed by Rathna Cafe represented by its partner, challenging the impugned orders passed by the second respondent in S.P.Nos.250 and 251 of 2015 in APV Nos.245 and 246 of 2015 dated 03.06.2015 in respect of the assessment years 2012-13 and 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 on or before 02.07.2015.

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 tax. That apart, at the time of filing appeals, the petitioner had already deposited 25% of the disputed tax amount and again when the stay applications were 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 of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Commercial Tax Officer,
   Thiruvallikeni Assessment Circle,
   Chennai - 28.

2. The Appellate Deputy Commissioner
   (CT) (East),
   C.T. Building Annexe 3rd Floor,
   Greams Road, Chennai.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.34151

W.P.Nos.20248 and 20249 of 2015

VGI(CO)
CA(22/07/2015)