IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.22006 of 2015
and
M.P.No.1 of 2015

M/s.Tulsian Refinery Pvt Ltd.,
represented by its Managing Director
No.49, Elephant Gate Street
Chennai-600 079. .. Petitioner

-vs-

1. The Appellate Deputy
Commissioner (CT) (FAC)
North Division, 3rd Floor
Greams Road
Chennai 600 006.

2. The Assistant Commissioner (CT)
Peddunaickenpet Assessment Circle
Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in SP.No.128/15 in A.P.V.127/15 dated 02.07.2015 and quash the same and further direct the first respondent to grant an absolute stay for the balance of tax amount and the entire penalty amount without insisting upon furnishing of bank guarantee till the pending disposal of the appeal on the file of the first respondent.

For Petitioner :: Ms.C.Rekha Kumari

For Respondents :: Mr.S.Kanmani Annamalai
Additional Govt. Pleader (T)

ORDER

This Writ Petition has been filed by M/s.Tulsian Refinery Pvt Ltd., represented by its Managing Director, challenging the impugned order passed by the first respondent in in SP.No.128/15 in A.P.V.127/15 of 2015 dated 02.07.2015, wherein the first respondent directed the petitioner to furnish bank guarantee to the satisfaction of the assessing authority for the balance amount of tax and penalty on or before 01.08.2015.

2. Challenging the said 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 shows 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 assessment itself, the petitioner had already deposited more than 50% of the disputed tax amount. 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 (Taxes) taking notice on behalf of the respondents.

4. This Court, in identical circumstances, while dealing with a similar impugned order, modified the said condition to one of directing the petitioner to execute personal bond instead of furnishing bank guarantee for the balance amount of tax and penalty.

5. In view of the fact that this Court had already considered a similar prayer and following the similar orders, this writ petition stands disposed of by replacing the 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 fifteen days from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

mra

sd/-
Assistant Registrar(IV)

True Copy

Sub-Assistant Registrar

To

1. The Appellate Deputy
Commissioner (CT) (FAC)
North Division, 3rd Floor
Greams Road Chennai 600 006.

2. The Assistant Commissioner (CT)
Peddunaickenpet Assessment Circle
Chennai.

+ 1 cc to M/s.C.Rekhakumari, Advocate SR 37604

+ 1 cc to the Spl.Govt.Pleader(T) SR 37247

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