IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.22818 to 22820 of 2015
And
M.P.Nos.1 of 2015

M/s.Tulsian Refinery Private Limited,
rep.by its Managing Director,
No.49, Elephant Gate Street,
Chennai - 600 079. ... Petitioner in all W.Ps.

Vs.

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

2.The Assistant Commissioner(CT),
Peddunaickenpet Assessment Circle,
Chennai. ... Respondents all W.Ps.

Common Prayer:

Writ petitions in W.P.Nos.22818 to 22820 of 2015 are filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the first respondent in S.P.Nos.143, 115 and 114 of 2015 in VAT.A.P.Nos.114, 112 and 111 of 2015 respectively dated 20.07.2015 and quash the same and further direct the first respondent to grant an absolute stay for the balance of tax and the entire penalty amount without insisting upon furnishing of bank guarantee till the pending disposal of the appeals on the files of the first respondent.

For Petitioner : Ms.C.Rekha Kumar

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

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COMMON ORDER

These Writ Petitions have been filed by M/s.Tulsian Refinery Private Limited, represented by its Managing Director, challenging the impugned orders passed by the first respondent in in S.P.Nos.143, 115 and 114 of 2015 in VAT.A.P.Nos.114, 112 and 111 of 2015 respectively, dated 20.07.2015, wherein the first respondent directed

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the petitioner to furnish bank guarantee on or before 19.8.2015 for the balance penalty, as 100% of the disputed tax was paid by the petitioner.

2.Challenging the said condition imposed against the petitioner, the learned counsel appearing for the petitioner would submit that the approach adopted by the first respondent clearly shows that he has failed to appreciate Section 24(2) of the TNGST Act and Section 42 of the TNVAT Act read with Section 9 of the CST Act. A joint reading of these provisions 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 of penalty. That apart, the petitioner has also paid 100% of the disputed tax at the time of assessment itself and again when the stay application has been taken up, the first respondent directed to furnish bank guarantee for the balance of penalty. While so, the petitioner is not in a position to file a Bank Guarantee for the balance of penalty.

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

4.In view of the fact that this Court has already considered the similar prayer and following the similar order, these writ petitions stand disposed of by modifying the condition of filing of bank guarantee for the balance of penalty to one of directing the petitioner to execute a personal bond for the balance of penalty, as there has been an automatic charge created in view of Section 24(2) of the TNGST Act and Section 42 of the TNVAT Act read with Section 9 of the CST Act. The petitioner is directed to execute the personal bond within a period of 15 days from the date of receipt of a copy of this order.

5.These writ petitions are disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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True Copy

Sub Assistant Registrar

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To

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

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

3 cc to Ms.C.Rekha Kumar , Advocate Sr.No.38447
1 cc to Special Government Pleader.Sr.No.38593

W.P.Nos.22818 to 22820 of 2015
and
M.P.Nos.1 of 2015

mp(co)
pmk.20.8.2015

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