

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.Nos.22989 to 22996 of 2015

and

M.P.Nos.1,1,1,1,1,1,1 and 1 of 2015

M/s.Mohan Agencies,
represented by its proprietor,
No.24, Velan Nagar,
2nd Street, Arumbakkam,
Chennai - 600 106. .. Petitioner in
all the above Petitions.

vs.

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

2.The Assistant Commissioner (CT),
Arumbakkam Assessment Circle,
7th Floor, Daulath Towers,
Taylors Road, Kilpauk,
Chennai - 600 010.

.. Respondents in all
the above Petitions.

Prayer:- Writ Petition No.22989 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the first respondent in his proceedings in S.P.No.327 of 2015 in APV No.382 of 2015, quash the order therein dated 9.7.2015 and further direct the first respondent may be permitted to give a personal bond in substitution of the bank guarantee in respect of the amount of balance of taxes and penalty.

Writ Petition No.22990 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the first respondent in his proceedings in S.P.No.328 of 2015 in APV No.383 of 2015, quash the order therein dated 9.7.2015 and further direct the first respondent may be permitted to give a personal bond in substitution of the bank guarantee in respect of the amount of balance of taxes and penalty.

Writ Petition No.22991 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the first respondent in his proceedings in S.P.No.329 of 2015 in APV No.384 of 2015, quash the order therein dated 9.7.2015 and further direct the first respondent may be permitted to give a personal bond in substitution of the bank guarantee in respect of the amount of balance of taxes and penalty.

Writ Petition No.22992 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the first respondent in his proceedings in S.P.No.330 of 2015 in APV No.385 of 2015, quash the order therein dated 9.7.2015 and further direct the first respondent may be permitted to give a personal bond in substitution of the bank guarantee in respect of the amount of balance of taxes and penalty.

Writ Petition No.22993 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the first respondent in his proceedings in S.P.No.331 of 2015 in APV No.385 of 2015, quash the order therein dated 9.7.2015 and further direct the first respondent may be permitted to give a personal bond in substitution of the bank guarantee in respect of the amount of balance of taxes and penalty.

Writ Petition No.22994 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the first respondent in his proceedings in S.P.No.345 of 2015 in APV No.418 of 2015, quash the order therein dated 9.7.2015 and further direct the first respondent may be permitted to give a personal bond in substitution of the bank guarantee in respect of the amount of balance of taxes and penalty.

Writ Petition No.22995 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the first respondent in his proceedings in S.P.No.332 of 2015 in APV No.387 of 2015, quash the order therein dated 9.7.2015 and further direct the first respondent may be permitted to give a personal bond in substitution of the bank guarantee in respect of the amount of balance of taxes and penalty.

Writ Petition No.22996 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the first respondent in his proceedings in S.P.No.333 of 2015 in APV No.388 of 2015, quash the order therein dated 9.7.2015 and further direct the first respondent may be permitted to give a personal bond in substitution of the bank guarantee in respect of the amount of balance of taxes and penalty.

For petitioner : Ms.Radhika Chandra Sekhar

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

ORDER

Head Ms.Radhika Chandrasekhar, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes), who took notice for the respondents and with their consent, the main Writ Petitions are taken up for final disposal.

2. All these Writ Petitions have been filed by M/s.Mohan Agencies, represented by its proprietor, challenging the impugned order passed by the first respondent in S.P.Nos.327, 328, 329, 330, 331, 345, 332, 333 of 2015 in VAT AP Nos.382,383,384,385,386,418,387 and 388 of 2015, respectively, dated 9.7.2015 wherein the first respondent directed the petitioner to pay another 25% of the disputed tax amount and again directed the petitioner to furnish the bank guarantee to the fullest satisfaction of the Assessing Officer for the balance amount of Tax and Penalty for a period of minimum six months from a Nationalised or Scheduled Bank before the Assessing Officer on or before 10.08.2015.

3. Challenging the second 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 TN VAT Act read with Section 9 of the CST Act. A joint reading of this provision 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 filing an appeal, the petitioner has also deposited 25% of the disputed tax amount and again when the stay application has been taken up, the first respondent 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 a Bank Guarantee for the balance amount of tax and penalty.

4. This Court in a similar occasion, while considering an identical circumstance, dealing with a similar impugned order, modified only the second 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.

5. 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 confirming the first condition and

replacing the second condition to one of directing the petitioner to execute a 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 TNGST Act and Section 42 of the TN VAT Act read with Section 9 of the CST Act. The petitioner is directed to execute the personal bond within a period of 10 days from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

asvm

To

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

2.The Assistant Commissioner (CT),
Arumbakkam Assessment Circle,
7th Floor, Daulath Towers,
Taylors Road, Kilpauk,
Chennai - 600 010.

+8 cc to Mr.K.Vatheeswaran, Advocate sr.38931/15

+1 cc to Mr.Special Government Pleader vide sr.39434/15

सत्यमेव जयते

W.P.Nos.22989 to
22996 of 2015

and

M.P.Nos.1,1,1,1,1,1,
1 and 1 of 2015

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