IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2015

CORAM:

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.Nos.33556 to 33559 of 2015
and M.P.Nos.1 to 1 of 2015

M/s.Beverly Hotels (P) Ltd., rep. by its Managing Director. .. Petitioner in all the writ petitions.

Vs

1.The Appellate Deputy Commissioner (CT),
Central, C.T.New Building III Floor,
Chennai-6.

2.The Assistant Commissioner (CT),
Kilpauk Assessment Circle,
Chennai-10. .. Respondents in all the writ petitions.

Writ Petitions filed under Article 226 of the Constitution of India for the issuance of a Writ of certiorarified Mandamus to call for the records of the first respondent in his proceedings in S.P.No.414 of 2015 in A.P.V.No.184 of 2015, S.P.No.415 of 2015 in A.P.V.No.185 of 2015, S.P.No.416 of 2015 in A.P.V.No.186 of 2015 and S.P.No.417 of 2015 in A.P.V.No.187 of 2015 respectively, quash the orders dated 25.9.2015 made therein and further direct the first respondent to grant an absolute stay for the entire penalty amount without insisting upon furnishing of any security till the disposal of the appeal on the files of the first respondent.

For Petitioner.. Mr.B.Raveendran, in all the WPs.

For Respondents.. Mr.S.Manohar Sundaram, Addl.Govt.Pleader, in all the WPs.

COMMON ORDER

Challenging the orders of first respondent in S.P.No.414 of 2015 in A.P.V.No.184 of 2015, S.P.No.415 of 2015 in A.P.V.No.185 of 2015, S.P.No.416 of 2015 in A.P.V.No.186 of 2015 and

S.P.No.417 of 2015 in A.P.V.No.187 of 2015 respectively dated 25.09.2015 made therein and for a further direction to the first respondent to grant an absolute stay for the entire penalty amount without insisting upon furnishing of any security till the disposal of the appeals on the file of the first respondent, the petitioner has come up with these writ petitions.

2.The petitioner is a hotel and registered on the file of the second respondent under TNVAT Act, 2006. The petitioner filed their monthly returns and the petitioner's original assessment was completed under Section 22(2) of TNVAT Act as a deemed assessment. While so, inspection was conducted by the enforcement wing officials and several issues were raised at the time of inspection. The petitioner also accepted most of the issues and paid taxes. However, based on the proposal forwarded by the enforcement wing, the second respondent issued revised assessment notices for 2007-08, 2008-09, 2009-10 and 2010-11, proposing to levy tax as well as penalty. Though the petitioner filed objections, the second respondent confirmed the proposal to levy tax and penalty by the assessment orders dated 28.11.2014, 28.11.2014, 12.12.2014 and 12.12.2014. As against the same, the petitioner preferred statutory appeals before the first respondent in A.P.V.Nos.184 and 185 of 2015 along with stay petitions in S.P.Nos.414 and 415 of 2015. The first respondent, by order dated 25.09.2015, granted stay on condition that the petitioner should file bank guarantee for the entire penalty amount on or before 23.10.2015. As against the assessment orders dated 12.12.2014, the petitioner preferred statutory appeals before the first respondent in A.P.V.Nos.186 and 187 of 2015 along with stay petitions in S.P.Nos.416 and 417 of 2015. The first respondent, by order dated 25.09.2015, granted stay on condition that the petitioner should pay 25% of the disputed tax and file a security for the balance tax and entire penalty on or before 23.10.2015. Aggrieved by the same, the petitioner is before this Court.

3.Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

4.Learned counsel for the petitioner would submit that the first respondent, without taking into consideration the applicable tax paid by the petitioner, directed the petitioner to furnish bank guarantee for the entire penalty amount for the assessment years 2007-08 and 2008-09 and also directed the petitioner to pay 25% of the tax for the assessment years 2009-10 and 2010-11 and to furnish security for the balance tax and entire penalty. He would further submit that the impugned orders were passed in a mechanical fashion and prays for setting aside the impugned orders. However, the learned counsel submitted that

25% of the disputed taxes have been paid, as directed, for the assessment years 2009-10 and 2010-11.

5.Per contra, the learned Additional Government Pleader would submit that the first respondent has rightly imposed conditions while granting stay and prays for dismissal of the writ petitions.

6. This Court, in a catena of decisions, directed the assessees to execute a personal bond in lieu of furnishing bank guarantee, only with regard to the remaining 50% of tax and penalty. In W.P.Nos.33556 and 33557 of 2015, the petitioner has already paid the entire tax amount. In W.P.Nos.33558 and 33559 of 2015, the petitioner had deposited 25% of the tax amount as directed by the appellate authority in each of the case. Therefore, the writ petitions in W.P.Nos.33558 and 33559 of 2015 are disposed of with a direction to the petitioner to execute personal bonds for the balance tax amount and entire penalty for the respective assessment years, in lieu of furnishing bank guarantees, within a period of two weeks from the date of receipt of a copy of this order. The writ petitions in W.P.Nos.33556 and 33557 of 2015 are disposed of with a direction to the petitioner to execute personal bonds for the entire penalty for the respective assessment years, in lieu of furnishing bank guarantees, within a period of two weeks from the date of receipt of a copy of this order. On such executing the personal bonds, the orders of stay granted by the first respondent shall be in force till the disposal of the appeals. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Appellate Deputy Commissioner (CT),
Central, C.T.New Building III Floor, Chennai-6.

2.The Assistant Commissioner (CT),
Kilpauk Assessment Circle, Chennai-10.

+ 1 cc to Special Government Pleader Sr.57337

+ 1 cc to Mr.B. Raveendran, Advocate SR.57652

W.P.Nos.33556 to 33559 of 2015

AK(CO)
EU 6.11.15