

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.10940 to 10944 of 2017

and

W.M.P.Nos. 11904 to 11913 of 2017

Breeze Hotel Ltd

A Public Limited Company,

Incorporated under the provisions

of the Companies Act,

Represented by its Authorised Representative,

S.K. Kumar

No.850, Poonamallee High Road,

Kilpauk,

Chennai - 600 010

... Petitioner for all W.Ps.

vs.

1. The Assistant Commissioner (CT),
Kilpauk Assessment Circle,
Chennai - 600 010

2. The Appellate Deputy Commissioner (CT)
Chennai (Central),
C.T. Building (Annexe), Third Floor,
Chennai - 600 006.

3. The Sub Registrar,
(District Registrar Cadre),
Purasawalkam,
Chennai - 600 007.

... Respondents in all W.Ps.

Prayer in W.P. No.10940 of 2017

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the files of the Second Respondent herein in its S.P. No.20/17 in A P Vat 54/17 dated 16.03.2017 and quash the same in so far as it relates to furnishing of bank guarantee for penalty amount of Rs.18,92,837/- and direct the 3rd respondent to delete the Encumbrance on property in Survey No.3123/1 created on 02.06.2016 & survey No.3123/1A9 created on 03.06.2016 in Document No.21/2016.

Prayer in W.P. No.10941 of 2017

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the files of the Second Respondent herein in its S.P. No.22/17 in A P Vat 56/17 dated 16.03.2017 and quash the same in so far as it relates to furnishing of bank guarantee for penalty amount of Rs.7,59,251/- and direct the 3rd respondent to delete the Encumbrance on property in Survey No.3123/1 created on 02.06.2016 & survey No.3123/1A9 created on 03.06.2016 in document No.21/2016.

Prayer in W.P. No.10942 of 2017

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the files of the Second Respondent herein in its S.P. No.21/17 in A P Vat 55/17 dated 16.03.2017 and quash the same in so far as it relates to furnishing of bank guarantee for penalty amount of Rs.16,38,191/- and direct the 3rd respondent to delete the Encumbrance on property in Survey No.3123/1 created on 02.06.2016 & survey No.3123/1A9 created on 03.06.2016 in document No.21/2016.

Prayer in W.P. No.10943 of 2017

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the files of the Second Respondent herein in its S.P. No.23/17 in A P Vat 57/17 dated 16.03.2017 and quash the same in so far as it relates to furnishing of bank guarantee for penalty amount of Rs.7,74,989/- and direct the 3rd respondent to delete the Encumbrance on property in Survey No.3123/1 created on 02.06.2016 & Survey No.3123/1A9 created on 03.06.2016 in document No.21/2016.

Prayer in W.P. No.10944 of 2017

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the files of the Second Respondent herein in its S.P. No.24/17 in A P Vat 58/17 dated 16.03.2017 and quash the same in so far as it relates to furnishing of bank guarantee for penalty amount of Rs.2,10,473/- and direct the 3rd respondent to delete the Encumbrance on property in Survey No.3123/1 created on 02.06.2016 & survey No.3123/1A9 created on 03.06.2016 in document No.21/2016.

For Petitioner : Mr.A.N.R.Jayaprathap

For Respondents : Mr.K.Venkatesh,
Government Advocate.

COMMON ORDER

The petitioner is aggrieved against the orders passed by the Appellate Authority, namely, the second respondent dated 16.03.2017 only insofar as the condition imposed therein for furnishing bank guarantee for the balance 75% of tax and penalty while granting the interim stay.

2. It is seen that the petitioner has filed those appeals before the second respondent challenging the orders passed by the Assessing Authority in respect of assessment years 2007-08 to 2011-12.

3. It is stated by the learned counsel for the petitioner that apart from paying 25% of the tax as directed by the 2nd respondent/ Appellate Authority, the petitioner has also paid the remaining 75% tax liability for all the assessment years and thereby complied with the first condition. Insofar as the second condition for furnishing bank guarantee that too in respect of penalty is concerned, it is submitted by the learned counsel for the petitioner that the petitioner may be permitted to furnish personal bond instead of Bank guarantee, as has been permitted in other cases.

4. Learned Government Advocate who takes notice for the respondents, based on instruction, submitted that the petitioner has already paid the entire tax liability.

5. Learned counsel for the petitioner further invited this Court's attention to the earlier order passed in similar matters, one in W.P.No.7196/2017 dated 24.03.2017 wherein this Court has modified the condition to the one of furnishing personal bond instead of furnishing bank guarantee, as directed by the authority therein.

6. Considering the above facts and circumstances and considering the fact that the petitioner has already paid the tax liability and sought for the stay of the penalty amount alone, I am of the view that in the interest of justice, the petitioner may be directed to furnish personal bond instead of bank guarantee as directed by Tribunal. Accordingly, the impugned orders passed by the Tribunal is modified to the effect that the petitioner shall furnish personal bond for the amount referable to the penalty instead of furnishing bank guarantee, as directed by the Tribunal. The petitioner is permitted to furnish such personal bond within a period of two weeks from the date of receipt of copy of this order. Since, it is stated that the petitioner has paid the entire tax liability, the first respondent may consider the lifting of attachment order and pass

appropriate orders on the request made by the petitioner. In all other respects, the order passed by the 2nd respondent stands. Accordingly, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vsi/nl

To

1. The Assistant Commissioner (CT),
Kilpauk Assessment Circle,
Chennai - 600 010
2. The Appellate Deputy Commissioner (CT)
Chennai (Central), C.T. Building (Annexe), Third Floor,
Chennai - 600 006.
3. The Sub Registrar,
(District Registrar Cadre),
Purasawalkam, Chennai - 600 007.

+5ccs to Mr.R.Sivaraman, Advocate, S.R.No.36370

सत्यमेव जयते

W.P.Nos.10940 to 10944 of 2017
and
W.M.P. Nos. 11904 to 11913 of 2017

rsy(co)
rmp(02/05/17)

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