BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :**27.10.2015**

CORAM

THE HONOURABLE **MR.JUSTICE R.SUBBIAH**

W.P(MD).No.19284 of 2015

M/s.VSS Enterprises,
Represented by its Proprietor V.Subramanian ...Petitioner

Vs.

1.The Appellate Deputy Commissioner(CT),
Virudhunagar.

2.The Commercial Tax Officer,
Karaikudi. ...Respondents

Prayer:This Writ Petition has been filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records in S.P.No.59/2015 in Vat AP No.126/2015, dated 12.10.2015 on the file of the first respondent and quash the same as illegal and direct the second respondent to accept the personal bond to be executed by the petitioner in lieu of security.

For Petitioner : Mr.S.Karunakar
For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

ORDER

The Writ Petition has been filed praying for a Writ of Certiorarified Mandamus calling for the records in S.P.No.59/2015 in Vat AP No.126/2015, dated 12.10.2015 on the file of the first respondent and quash the same as illegal and direct the second respondent to accept the personal bond to be executed by the petitioner in lieu of security.

2.Mr.R.Karthikeyan, learned Additional Government Pleader takes notice for the respondents.

3. By consent, the Writ Petition is taken up for final disposal.

4. In the affidavit it has been averred that the petitioner is a dealer in timber and an assessee on the file of the second

respondent herein. The petitioner was originally deemed to have been assessed under Section 22(2) of the TNVAT Act by accepting the returns. But, subsequently, based on the verification of the assessment file, the second respondent had reopened the assessment and passed a revised order dated 18.05.2015. Thereafter, the petitioner preferred an appeal in VAT A.P.No.126/2015 before the first respondent disputing the tax of Rs.2,28,491/- along with penalty of Rs.3,42,737/-. In the appeal the petitioner contended that the Assessing Authority has not given any materials for determining the taxable turn over and recorded a wrong finding.

5. According to the petitioner, they have imported Solid Timbers Doors from M/s.Door Master Industries SDN, BHD, Malaysia vide their invoice No.0073/2014, dated 03.02.2014 covered by proper bill. Even though the import transaction was not shown in the return, the same has been properly accounted for in the books of account without any omission. Just because the purchase was not shown in the return, it cannot be construed as a suppressed transaction warranting estimation of sales on presumptive grounds. Hence, the petitioner has made an application of stay of recovery of tax & penalty in S.P.No.59 of 2015. The first respondent who heard the stay petition mechanically directed the petitioner to pay further amount of Rs.57,122/- on arrears of tax on or before 12.11.2015 and file a security bond or bank guarantee for the balance of tax and penalty of Rs.4,56,906/- on or before 12.11.2015. The petitioner had paid the directed amount and the petitioner has no liquid resource to take a security bond or bank guarantee or to pay the balance of arrear immediately. Hence, the petitioner has filed the present Writ Petition for the relief stated supra.

6. When the matter is taken up for consideration, the learned counsel for the petitioner has relied on a judgment of a learned Single Judge of this Court in W.P.No.1521 of 2005, dated 08.03.2005 in the case of ***M/s.Mangayarkarasi Mills Private Limited, Madurai vs. The Appellate Assistant Commissioner(CT), Madurai(south) and another*** and also various orders passed by this Court in other Writ Petitions and submitted that in all the cases the Writ Petitioners are directed to execute a personal bond instead of furnishing bank guarantee. Therefore, following the same, similar order could be passed.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. Considering the submissions made by either side, following the order passed in the Writ Petition referred above, the Writ Petition is disposed of, with a direction to the petitioner to execute a personal bond instead of furnishing bank guarantee, as

required by the appellate authority as a condition for grant of stay. Such a personal bond shall be executed within a period of two weeks from the date of receipt of a copy of this order. On receipt of the personal bond, the appellate authority is directed to dispose of the appeal on merits. On execution of the personal bond, the stay granted by the appellate authority shall continue till the disposal of the appeal. No Costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.The Appellate Deputy Commissioner(CT),
Virudhunagar.

2.The Commercial Tax Officer,
Karaikudi.

+1cc to Mr.S.Karunakaran, Advocate Sr.No.63081
pm
AA/SKS-RR/SAR-I/02.11.2015/3p-4c

W.P(MD).No.19284 of 2015
27.10.2015