IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: **21.11.2016**

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.40697 of 2016
W.M.P.Nos.34699 and 34700 of 2016

M/s.A.J.R.Motors [Petitioner]
Rep. by its Proprietor
A.Seetharaman
Railway Station Bus Stop
Bye Pass Road
Kuringipadi
Cuddalore District

Vs

1 The Commercial Tax Officer
Cuddalore Taluk Circle Cuddalaore
Cuddalore District

2 The Appellate Deputy Commissioner (CT)
Cuddalaore, Cuddalore District

3 Tamil Nadu Sales Tax Appellate Tribunal
Rep. by its Chairman (Main Bench)
Chennai-104.

[Respondents]

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of certiorari calling for the records on the file of the 3rd respondent in his proceedings made in T.P.23/2016 in TA.124/2016 dated 22.7.2016 quash the same in so far as it directs the petitioner to furnish security for the balance disputed penalty due for the Assessment Year 2012-2013 under the TNVAT Act 2006.

For Petitioner	: Ms.R.Hemalatha
For Respondents	: Mr.S.Kanmani Annamalai Addl.Government Pleader

ORDER

The writ petition has been filed challenging the proceedings of the 3rd respondent dated 22.7.2016, in so far as, it directs the petitioner to furnish security for the balance disputed penalty due for the Assessment Year 2012-2013 under the Tamil Nadu Value Added Tax Act 2006 (hereinafter referred to as the TNVAT Act, 2006).

2. The petitioner is a dealer in Automobile spare parts and an assessee under the 1st respondent. For the year 2012-13, the assessment was completed under the deeming provision of Section 22(2) of the TNVAT Act, 2006. A notice dated 27.02.2015 was issued by the 1st respondent stating that the petitioner had not declared certain purchases in the monthly returns. Therefore, the assessment is sought to be revised under Section 27(1)(a) of the TNVAT Act, 2006 and penalty has also been proposed by the 1st respondent by order dated 28.05.2015. Aggrieved by that order, the petitioner preferred an appeal before the 2nd respondent, who dismissed the same by order dated 01.10.2015. Against the said dismissal order, the petitioner preferred a Second Appeal before the Tamil Nadu Sales Tax Appellate Tribunal (hereinafter referred to as the Tribunal) along with a stay

petition. Before the Tribunal, the petitioner had paid the entire tax amount. However, the Tribunal while granting stay of the execution of the order imposing penalty till the disposal of the appeal, had directed the petitioner to furnish sufficient bank guarantee covering the entire penalty amount. The petitioner seeks execution of personal bond instead of Bank Guarantee. Therefore, the order of the Tribunal is challenged before this Court.

3. Heard Ms.R. Hemalatha, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, who takes notice one behalf of the respondents.

4. Ms.R.Hemalatha, learned counsel appearing for the petitioner, submitted that in similar circumstances, in W.P.No.36603 of 2016, of course the order of the Commissioner was challenged, in and by which the Commissioner ordered furnishing of Bank Guarantee in respect of the balance of tax and penalty amount and this court by order dated 19.102016 modified the order and permitted the petitioner therein to execute personal bond for the balance tax amount and penalty in lieu of furnishing Bank Guarantee.

5. Mr.S.Kanmani Annamalai, learned Additional Government Pleader, submitted that similar order may be passed in this writ

petition also.

6. Having regard to the submissions made by the learned counsel on either side, the petitioner is directed to execute a personal bond for the disputed entire penalty amount in lieu of furnishing Bank Guarantee, within a period of two weeks from the date of receipt of a copy of this order. On such executing the personal bond, the order of stay granted by the third respondent shall be in force till the disposal of the appeal.

The Writ Petition is disposed of on the above terms. No costs. Connected miscellaneous petitions are closed.

21.11.2016

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To

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N.KIRUBAKARAN, J.,
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