**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: **04.11.2016**

CORAM:

**THE HON'BLE DR.JUSTICE S.VIMALA**

**W.P(MD)No21055 of 2016**

TVL. Shivaji Traders,
Rep. By its Proprietor R.Balachandar,
No.284-V-7/9, Krishna Market,
K.S.Compound, Oddanchathram .. Petitioner

Vs.

1. The Appellate Deputy Commissioner(CT) (FAC),
   Madurai (North), Madurai.

2. The Commercial Tax Officer,
   Palani-II Assessment Circle,
   Palani. .. Respondents

Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent in S.P. NO.19/2016 in VAT AP.85/2016 dated 06.10.2016 quash the same in so far as the condition to file Security Bond or Bank Guarantee for the balance of tax and entire penalty of Rs.32,60,226/- is concerned and further direct the first respondent to grant stay till disposal of the petitioner's appeal VAT AP.85/2016.

For Petitioner : Mr.A.Chandrasekaran

For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

**O R D E R**

This Writ Petition has been filed seeking for issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent in S.P. NO.19/2016 in VAT AP.85/2016 dated 06.10.2016, quash the same in so far as the condition to file Security Bond or Bank guarantee for the balance of tax and entire penalty of Rs.32,60,226/- is concerned and further direct the first respondent to grant stay till disposal of the petitioner's appeal VAT AP.85/2016. .



2.Heard the learned Counsel for the petitioner and the learned

Additional Government Pleader, who takes notice for the respondents. By consent, the writ petition is taken up for final disposal at the stage of admission.

3. The learned Counsel appearing for the petitioner would submit that the respondents have collected the entire arrears of tax amount from the petitioner firm and the balance of penalty amount to be paid by the petitioner is under challenge, for which, the appellate authority directed the petitioner firm to file a Security Bond or Bank Guarantee. However, the petitioner firm is not in a position to provide the same. He would further submit that the amount demanded by the respondents is disputed one, which has to be decided by the authority concerned. Therefore, he seeks modification of the order of the appellate authority.

4.In a similar occasion, the Division Bench of this Court made in W.A.(MD).No.194 of 2005, dated 13.07.2006, has held as follows:-

> "2.When the appellant preferred a statutory appeal before the first respondent, as a condition precedent for filing an appeal, the appellant deposited 25% of the tax assessed. It is stated that as per the interim orders of the first respondent, the appellant has also paid another 20% of the assessed tax which is under challenge before the first respondent.
>
> 3. In such circumstances, we feel that the interim order of stay granted by the first respondent can be directed to be continued subject to the appellant furnishing a personal bond for the remaining tax amount as well as penalty.
>
> 4. Subject to such modification, the Writ Appeal stands disposed of. The order of the learned Single Judge is also modified to the above extent. Such personal bond shall be furnished by the appellant within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

5. In view of the earlier order and also in view of the fact that the petitioner firm has already paid 50% of tax amount, this court, considering the facts and circumstances of the cases, modifies the conditions imposed by the appellate authority only insofar as to the grant of Bank Guarantee:-

(i) For the balance of tax and penalty amount, the petitioner firm shall execute a personal bond with the appellate authority within a period of two weeks from the date of receipt of a copy of this order.

(ii) In case, if the petitioner firm fails to furnish the personal bond for the penalty amount as imposed by the respondents, this modification granted by this Court shall stand cancelled without any reference to this Court and the order of the appellate authority will get automatically restored.



6.The learned Additional Government Pleader appearing for the respondents would submit that the present writ petition is filed by one R.Balachandar, in the capacity of Proprietor of TVL.Shivaji Traders, and the personal bond for the balance tax and entire penalty amount should be executed in his personal capacity. This submission is accepted by the learned counsel for the petitioner. Therefore, personal bond for the balance of tax and entire penalty amount should be executed by R.Balanchandar in his individual capacity. There shall be an order of interim stay till the disposal of the statutory appeal in VAT AP.85/2016.

Accordingly, the Writ Petition is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

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To

1. The Appellate Deputy Commissioner(CT),
Madurai (North)Madurai

2.The Commercial Tax Officer,
Palani-II Assessment Circle,
Palani.

+1 cc to MR.A.CHANDRASEKARAN, Advocate SR.No.66456

+1 cc to Special Government Pleader SR.No.66647

**W.P(MD)No.21055 of 2016**
**04.11.2016**

**SMA/RR/17.03.2017:3P/5C**