BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.05.2016
CORAM:
THE HONOURABLE MR.JUSTICE T.S. SIVAGNANAM
W.P.(MD)No.9046 of 2016

M/s.Aruna Girinathar Tiles & Granites,
Represented by its Proprietrix R.Shanthi,
No.1303/R. Madurapuri,
Pirivu Road Roundana, Thuraiyur.
Trichy ... Petitioner

vs.

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

2. The Commercial Tax Officer,
Thuraiyur Assessment Circle,
Thuraiyur. ... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus or order or direction in the nature of the Writ calling for the records in S.P.No.61 of 2016 in VAT AP No.54 of 2016 dated 04.04.2016 on the file of the first respondent and to quash the same as illegal and to 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

O R D E R

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

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

3. Heard both sides.

4. The petitioner seeks to quash the impugned proceedings, which is an order passed in a stay petition filed by the petitioner before the first respondent against the order passed by the second respondent dated 24.02.2016.

5. The petitioner has disputed the payment of tax and penalty as demanded by the order of assessment dated 24.02.2016. The stay petition was resisted by the Commercial Tax Department stating that the interest of revenue has to be protected and unless the petitioner shows prima facie case, interim stay should not be granted by the appellate authority.

6. The first respondent, taking note of the various decisions passed by this Court, observed that there is no straight jacket formula for grant of full or conditional stay or for refusal of stay and the most important factors to be considered are the prima facie case and the hardship to the assessee. Keeping in mind, these factors, the first respondent observed that the appeal cannot be immediately disposed of and taking note of the case pleaded by the petitioner, granted stay for a period of six months or till the disposal of the appeal subject to the condition that the petitioner prays 25% of the disputed tax and for the remaining amount, bank guarantee to be furnished, which shall be kept valid for a period of six months.

7. The petitioner is aggrieved by the direction issued by the first respondent, directing the petitioner to furnish bank guarantee for the remaining amount, after paying 25% of the tax.

8. The learned counsel for the petitioner invited the attention of this Court to an earlier order **dated 24.07.2014 in W.P.(MD)No.12123 of 2014 in the case of T.V.S.Sri Chakra Limited V. Assistant Commissioner, Madurai**, wherein, this Court after considering a similar case, directed instead of bank guarantee, the petitioner therein can furnish a personal bond.

9. In the light of the above, this Court is of the view that the petitioner on deposit of 25% of disputed tax, should be directed to furnish a personal bond instead of bank guarantee as ordered by the first respondent.

10. The writ petition is disposed of with a direction to the first respondent to accept the personal bond in the proper format instead of bank guarantee as ordered by the first respondent in the impugned order. No costs.

Sd/-
Assistant Registrar/Vacation Officer

/True copy/

Sub Assistant Registrar

To

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

2. The Commercial Tax Officer,
Thuraiyur Assessment Circle, Thuraiyur.

+1cc to M/s.S.Karunakhar, Advocate SR.NO.25877

SM:SSV-MP:SAR I:2P/4C