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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **24.04.2018**
CORAM:
THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

**W.P.(MD)Nos.8668 and 8669 of 2018**
**and**
**W.M.P.(MD)Nos.8135 and 8136 of 2018**

M/s.Ganesh Builders,
Represented by its Proprietor,
N.Ramasubramanian : Petitioner in both W.Ps.

Vs.

1. The Appellate Deputy Commissioner (CT),
   Commercial Tax Building,
   Trichy.

2. The Assistant Commissioner (CT),
   Palakarai - I Assessment Circle,
   Commercial Tax Building,
   Trichy. : Respondents in both W.Ps.

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in S.P.Nos.33 and 34 of 2018 in AP Nos.71 and 70 of 2018, respectively, dated 20.03.2018 on the file of the first respondent and quash the same in so far as it relates to the furnishing of security bond or bank guarantee of balance of tax and penalty 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(in both WPs)
For Respondents : Mrs.J.Padmavathi Devi,(in both WPs)
Special Government Pleader

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**COMMON ORDER**

Aggrieved over the orders passed by the appellate authority on the stay petitions filed by the petitioner, the present Writ Petitions have been filed.

2. The Appellate Deputy Commissioner (CT), the first respondent herein, has granted stay on condition of payment of Rs.83,042/- in respect of VAT AP.71 of 2018 for the assessment

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year 2013-2014 and a sum of Rs.3,54,246/- in respect of VAT AP.70 of 2018 for the assessment year 2014-2015 and also imposed another condition that for the rest of the amount, security bond or bank guarantee shall be produced for a period of six months. The condition imposed, according to the petitioner, is causing irreparable injury and he is not in a position to pay such a huge amount. The petitioner has also produced a proof for paying the tax, as ordered by the first respondent to the tune of Rs.4,37,288/-.

3. The learned counsel for the petitioner would vehemently contend that the respondents always have the first charge over the movable and immovable properties of an assessee, by virtue of the provisions of Section 42(1) of the Tamil Nadu Value Added Tax Act, 2006. Therefore, the impugned orders relating to furnishing of security bond or bank guarantee are liable to be set aside.

4. I have considered the rival contentions made on either side.

5. It is well settled law that there is no straitjacket formula for grant of full or conditional stay or for refusal of stay. The most important factors to be considered are the *prima facie* case and the hardship to the assessee. Whether the tax has been collected by the dealer has also to be considered. The fourth factor is the balance of convenience or irreparable injury.

6. In the present case, the dealer has paid a sum of Rs.83,042/- for the assessment year 2013-14 and Rs.3,54,246/- for the assessment year 2014-15, as demanded by the assessing authority and the petitioner was asked to furnish security bond or bank guarantee for the balance of tax and penalty. In such circumstances, it is no doubt that it will cause financial hardship to the assessee.

7. In my considered view, since the petitioner has paid some amount towards the tax due and the respondents have the first charge over the movable and immovable properties, the order passed by the first respondent directing the petitioner to furnish security bond or bank guarantee is excessive. Therefore, it will be in the interest of justice, if a direction is issued to the petitioner to furnish a personal bond for the balance amount of tax due and penalty.

8. In the result, the Writ Petitions are partly allowed and the condition imposed by the first respondent to furnish bank guarantee or security bond alone is set aside and the same is modified as follows:

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'The petitioner shall execute a personal bond for the balance tax amount and penalty for the respective assessment years, within a period of two weeks from the date of receipt of a copy of this order. The petitioner shall keep the bond alive till the disposal of the appeals by the first respondent.'

9. The stay will continue till the disposal of the appeals by the first respondent.

No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Appellate Deputy Commissioner (CT),
   Commercial Tax Building,
   Trichy.

2. The Assistant Commissioner (CT),
   Palakarai - I Assessment Circle,
   Commercial Tax Building,
   Trichy.

+2cc to Mr.S.Karunakar, Advocate Sr.No.63209,63208

SML

VB/SKN/RSK/SAR1/28/05/2018/3P/5C

Common Order made in
**W.P.(MD)Nos.8668 and 8669 of 2018**
Dated: **24.04.2018**

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