BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **24.04.2018**

CORAM:

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

W.P.(MD)No.8770 of 2018

M/s.Sree Sathya Plywoods,
Represented by its Partner,
R.Sugumar : Petitioner

Vs.

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

2. The Assistant Commissioner (CT),
   Mailamchandai - I Assessment Circle,
   Trichy. : Respondents

PRAYER: Writ Petition is 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.No.31 of 2018 in AP No.72 of 2018, 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

For Respondents : Mr.B.Bhagavathi,
Government Advocate

*****

ORDER

Aggrieved over the order passed by the appellate authority on the stay petition filed by the petitioner, the present Writ Petition has been filed.

2. The Appellate Deputy Commissioner (CT), the first respondent herein, has granted stay on condition of payment of Rs.41,310/- in respect of VAT AP.72 of 2018 for the assessment year 2013-2014 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.41,310/-.

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 order relating to furnishing of security bond or bank guarantee is 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.41,310/- for the assessment year 2013-2014, 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 Petition is 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:

> 'The petitioner shall execute a personal bond for the balance tax amount and penalty for the assessment year 2013-2014, 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 appeal by the first respondent.'

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

No costs.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

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

2. The Assistant Commissioner (CT),
   Mailamchandai - I Assessment Circle,
   Trichy.

+1cc to Mr.S.Karunakar, Advocate Sr.No.63207
+1cc to Spl.Government Pleader Sr.No.63322

SML

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

Order made in
W.P.(MD)No.8770 of 2018
Dated: **24.04.2018**