BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.12136 of 2018

Tvl.Meenakshi Oil Traders,
Rep. by its Partner
R.Jeyapal : Petitioner

Vs.

1. The Appellate Deputy Commissioner (CT) (FAC),
   Tiruchirappalli.

2. The Assistant Commissioner (CT),
   Maliamchandai-II 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 on the file of the first respondent in S.P.No.51/2018 in VAT.AP.92/2018, dated 16.05.2018, quash the same insofar as the conditions to pay a further payment of Rs.49,864/- and to file a Security Bond or Bank guarantee for the balance of tax and penalty of Rs.9,60,279/- is concerned and for a direction to the first respondent to grant stay till the disposal of the petitioner's appeal, VAT.AP.92/2018.

For Petitioner : Mr.A.Chandrasekaran
For Respondents : Mr.S.Dhayalan,
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) (FAC), the first respondent herein, has granted stay on condition of further payment of Rs.49,864/- in respect of VAT AP.92 of 2018 for the assessment year 2015-2016 and also imposed another condition that for the rest of the tax amount and penalty, security bond or bank guarantee shall be produced for a period of six months.

3. It is the contention of the learned counsel for the petitioner that the petitioner has already paid Rs.3,41,005/-, being 60% of the disputed tax and hence, the condition imposed directing further payment of Rs.49,864/-, according to the petitioner, is causing irreparable injury and he is not in a position to pay such a huge amount. Therefore, the impugned order directing further payment of Rs.49,864/- is liable to be set aside.

4. 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 also liable to be set aside.

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

6. 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.

7. In the present case, the dealer has already paid a sum of Rs.3,41,005/- for the assessment year 2015-2016, as demanded by the assessing authority and the petitioner was asked to pay a further payment of Rs.49,864/- and also 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.

8. In my considered view, since the petitioner has already paid 60% of the disputed tax and the respondents have the first charge over the movable and immovable properties, the order passed by the first respondent directing the petitioner to pay a further payment of Rs.49,864/- and 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.

9. In the result, the Writ Petition is partly allowed and the condition imposed by the first respondent to pay a further payment of Rs.49,864/ and 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 2015-2016, 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.'

10. The stay will continue till the disposal of the appeal by the first respondent.
No costs.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Appellate Deputy Commissioner (CT) (FAC),
   Tiruchirappalli.

2. The Assistant Commissioner (CT),
   Maliamchandai-II Assessment Circle,
   Trichy.

+ 1 CC TO Mr.A.CHANDRASEKARAN, ADVOCATE IN SR No. 67187
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 67352

SML
TE/SKN-RSK/SAR-1 : 18/06/2018 : 3P/5C

Order made in
W.P.(MD)No.12136 of 2018
Dated: 07.06.2018