BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **03.08.2018**

CORAM:

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

W.P.(MD)No.17490 of 2018

Tvl.PL.A.Rathna Residency,
Represented by its Partner PL.Annamalai,
No.2, DGL Road,
Central Bus Stand,
Trichy. : Petitioner

Vs.

1. The Assistant Commissioner (ST),
   Palakkarai Assessment Circle-I,
   Trichy.

2. The Appellate Deputy Commissioner (CT),
   Trichy. : Respondents

PRAYER: Writ Petition - filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records on the files of the second respondent herein in S.P.No.52/2018 in VAT A.P.78/2018 dated 05.07.2018, quashing the same, insofar as it direct the petitioners to furnish Bank guarantee.

For Petitioner : Mr.S.Karunakar

For Respondents : Mr.A.Muthu karuppan
Additional Government Pleader

ORDER

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

2. The Appellate Deputy Commissioner (CT), Trichy, the second respondent herein, has granted stay on condition of payment of Rs.24,471/- in respect of VAT.AP.No.78 of 2018 for the assessment year 2015-16 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 second respondent to the tune of Rs.24,471/-.

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.24,471/- in respect of the assessment year 2015-16, 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 second 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 second 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 2015-16, 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 second respondent.'

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

the second respondent. No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Assistant Commissioner (ST),
   Palakkarai Assessment Circle-I,
   Trichy.

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

+ 1 cc TO Mr.S.Karunakar , Advocate in SR No. 76973
+ 1 cc TO The Special Government Pleader in SR No. 77311

sm
AE/MK/SKN/SAR1/03.09.2018/3P/5C

Order made in
W.P.(MD)No.17490 of 2018
03.08.2018