IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.25624 of 2015
and M.P.Nos 1 & 2 of 2015

M/s. Sakthi Ganesh Agencies
Rep. by its Partner-P.D.Purushotaman
No.7/1 Beri Bekkali Street,
Vellore, Vellore District. [Petitioner]

Vs

1 The Assistant Commissioner(CT)
Vellore (Rural) Vellore Vellore District.

2 The Appellate Deputy
Commissioner (CT) Vellore Vellore District.
[Respondents]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records on the file of the 2nd Respondent in his impugned Return Memo made in N.Dis.761/2015 dated 1.7.2015 quash the same as illegal and contrary to the scheme of the Act and further direct the 2nd Respondent to entertain the appeal petition relating to the Assessment year 2012-2013 under TNVAT Act 2006 and disposed of in accordance with law.

For petitioner : Ms.R.Hemalatha
For respondents: Mr.S.Manoharan Sundaram, AGP(T)

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) who took notice for the respondents and with their consent, the main writ petition itself is taken up for disposal.

2. This writ petition has been filed challenging the 2nd Respondent's Return Memo made in N.Dis.761/2015 dated 1.7.2015 and to direct the 2nd Respondent to entertain the appeal petition relating to the Assessment year 2012-2013 under TNVAT Act 2006 and dispose of the same in accordance with law.

3. The case of the petitioner is that they are the dealers in consumer durables and assessee on the files of the Assistant Commissioner (CT), Vellore in TIN.No.33924320984. The petitioner had filed monthly returns in Form I declaring a total and taxable turnover for the assessment year 2012-13. They were assessed under Section 22(2) of the TNVAT Act, 2006, by the proceedings of the 1st respondent dated 31.10.2013. The further case of the petitioner is that the 1st respondent had issued notice dated 30.04.2014, proposing to reverse the ITC under Section 19(15) of the TNVAT Act, 2006, and called for objections. The Assistant Commissioner, by order dated 21.11.2014, confirmed the proposal since the dealer has not filed any objections. The original assessment order was served on the petitioner on 24.11.2014, and a copy of the same was served on 23.04.2015, which is evident from the certificate issued by the Assistant Commissioner, Vellore on 21.05.2015. As against the said order, the petitioner preferred an appeal based on the certified copy of the order served on 23.04.2015. However, by return memo dated 01.07.2015, the appellate authority has returned the appeal on the ground that since as per the certificate issued by the Assistant Commissioner, Vellore, the original assessment order was served on 24.11.2014 and the appeal was filed on 28.04.2015 after a lapse of 5 months. Aggrieved over the same, the petitioner is before this Court.

3. Admittedly, the petitioner filed an appeal as against the order of assessment before the 2nd respondent belatedly. Hence, the 2nd respondent passed the impugned order, returning the papers, since he has no jurisdiction or power to entertain the belated filing of appeals. Hence, there is no justifiable reason to interfere with the impugned order. At the same time, considering the payment of mandatory deposit of 25% as well as acceptable reasons adduced for re-presenting the papers belatedly, this Court, invoking article 226 of the Constitution of India, directs the appellate authority to entertain the appeal, hear the same and pass orders on merits and in accordance with law, after affording due opportunity to the petitioner. It is made clear that the date of hearing so fixed shall be intimated to the petitioner well in advance and thereafter further proceedings shall be completed as expeditiously as possible.

The writ petition is disposed of with the above directions. No costs. Connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar(CSV)

/true copy/

Sub Asst. Registrar

To

1 The Assistant Commissioner(CT)
Vellore (Rural) Vellore Vellore District.

2 The Appellate Deputy
Commissioner (CT) Vellore Vellore District.

+1 cc to Mrs.R.Hemalatha, Advocate sr.43626/15
+1 cc to Special Government Pleader (Taxes) Advocate sr.44217)

W.P.No.25624 of 2015

kgk(co)
aa01/09/2015