IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.30914 to 30918 of 2015
and M.P.Nos.1 of 2015

Tvl.A.V.S.Constructions [Petitioner in all WPs]
Rep. by its Partner S.Yuvaraju
3rd Floor AVS Towers
Opposite to Taluk Office
Hosur- 635 109.

Vs

1 The Appellate Deputy Commissioner (CT)
C.T.Building Salem.

2 The Assistant Commissioner(CT)
Hosur (North) Assessment Circle Hosur. [Respondents in all WPs]

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records on the files of the 1st respondent in M.P.Nos.96,94,95,98 and 97/2015 respectively dated 13.08.2015 and connected proceedings of the 2nd respondent in TIN:33493363491/ 2012-13, 2010-11, 2011-12, 2013-14 and CST 888, 88/2012-13 (WP.No.30917/15)respectively dated 30.09.2014 and quash the same.

For Petitioner : Mr.R.Senniappan
For Respondents : Mr.S.Kanmani Annamalai, AGP(T)

C O M M O N O R D E R

Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), takes notice for the respondents and with their consent, the main writ petitions are taken up for disposal.

2.These writ petitions have been filed under Article 226 of the Constitution of India challenging the orders of the 1st respondent dated 13.08.2015 and connected proceedings of the 2nd respondent dated 30.09.2014.

3.1 The petitioners are Civil Works contractors and assessee on the file of the 2nd respondent. The maximum work order is issued by Highways Department, Government of Tamil Nadu for laying and repairing the highways road in and around Krishnagiri and Salem Districts. The Government department while raising bill had deducted 2% as TDs in accordance with Section 13 of the TNVAT Act, 2006. The petitioner had done civil work for a private person also in respect of which, the petitioner made payment of tax to the department in time without default. As a result, there was an excess payment accumulated in every assessment year, which was carried forward to the next assessment year, likewise accumulated year after year from 2010-11 to till date, as a result, the 2nd respondent has to own money nearly to the tune of Rs.76 lakhs as on date to the petitioner. Whileso, the 2nd respondent has passed orders of revision of assessment for the assessment years in question on 30.09.2014 on the basis of the report sent by the Officials of the Enforcement Wing, who prepared such statement during inspection conducted by them at the place of business of the petitioner on 10.12.2013, 11.12.2013 and 12.12.2013, stating that there was a difference in turnover between monthly return in Form I and the value mentioned in the purchase statement and therefore, added equal time for probable omission to the book turnover with gross profit and freight as a result, a huge amount of tax including penalty levied against the petitioner under Section 27(3)(c) of the Act.

3.2 According to the petitioner, as against the said orders of the 2nd respondent dated 30.09.2014, the petitioner preferred appeals before the 1st respondent by paying 25% of the disputed tax, however with a delay of 233 days and it is the case of the petitioner that the appeals were filed only after recovery of illness suffered by the concerned Accounts Manager, who is incharge of filing monthly return and who is also incharge of filing appeal against the orders of assessment.

3.3 Further, according to the petitioner, the 1st respondent had returned the entire appeals papers with orders dated 13.08.2015 by saying the petitioner ought to have filed appeals in time along with payment of 25% and since the same were filed with a delay of 231 days respectively, the appeals papers are returned.

Aggrieved over the same, the petitioner is before this Court.

4. The learned counsel for the petitioner would submit that challenging the correctness of the assessment orders in question the petitioner preferred appeals before the appellate authority, however with a delay of more than 200 days. The learned counsel for the petitioner would further submit that the delay was occurred in view of fact that the Accounts Manger, who is looking after the filing of monthly returns, filing appeals etc. had unfortunately affected by chicken pox, as a result, he could not move from one place to another during the relevant point of time and after his recovery, the appeals paper made ready and the same were filed. But, the appellate authority, declining to condone the delay beyond a period of 60 days, dismissed the appeals as not maintainable. He would further submit

that the delay was occurred due to the officer concerned having suffered from certain medical ailments and not due to certain malafide reason. Therefore, according to the learned counsel for the petitioner, the delay has to be condoned and the matters are to be heard by the appellate authority on merits.

5. The learned Additional Government Pleader (Taxes), appearing for the respondents, on the other hand submitted that since the appeals were filed beyond the limitation period, the appellate authority has rightly rejected the appeals.

6. This Court heard the submissions made by the learned counsel on either side and perused the materials available on record.

7. Admittedly, the petitioner filed appeals belatedly beyond the period of 60 days (30+30). As per Section 51(1) of the TNVAT Act, any person objecting to an order passed by the assessing authority within a period of 30 days from the date on which the order was served on him can file an appeal. As per the first proviso to sub section (1) of Section 51 of the Act, the assessee can file an appeal before the appellate authority within a further period of 30 days and such appeal can be admitted if the assessee has sufficient cause for not presenting the appeal within the first 30 days. As far as the cases in hand are concerned, the petitioner has filed the appeals after a period of more than 200 days. Admittedly, the appellate authority having found that the petitioner has filed the appeals with a delay of more than 200 days and also violated the 2nd proviso to Section 51(1) of the Act, which stipulates that no appeal shall be entertained unless the same is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable, as the case may be, and 25% of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant and since the petitioner has not paid the same within a period of 30 days and also withina a further period of 30 days, rejected the appeals as not maintainable.

8. The appellate authority did not dispute the veracity of the statement of the petitioner nor it was its case that the petitioner filed the appeals belatedly for certain malafide reason with a deliberate intention to delay the matters. The appellate authority also did not record such a finding. Hence, this Court, on considering the submissions made by the learned counsel on either side and having been satisfied with the reasons stated in the affidavits filed in support of the writ petitions and in the interest of justice, is of the view that the delay should be condoned and the matters are to be heard by the appellate authority on merits.

9. In view of the above, by condoning the delay, this Court permits the petitioner to re-present the appeals before the appellate authority by complying with all the mandatory requirements within a

period of two weeks from the date of receipt of a copy of this order and on such re-presentation, the appellate authority is directed to entertain the same and pass orders on merits and in accordance with law.

The writ petitions are disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

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s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1 The Appellate Deputy Commissioner (CT)
C.T.Building Salem.

2 The Assistant Commissioner(CT)
Hosur (North) Assessment Circle Hosur.

+ 1 cc to Special Govt.Pleader (Taxes) SR 53273

+ 1 cc to Mr.R.Senniappan, Advocate SR 53480

pvr(co)
prk6/10

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