IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.Nos.31521 and 31522 of 2015
and M.P.Nos 1 of 2015

M/s. Rajalakshmi Ever Silver Mart
Rep by its Proprietor Mr.R. Anand Babu
No.68 Kumbakonam Road Panruti
[Petitioner in W.P.No.31521/15]

M/s. Rajalakshmi Ever Silver Mart
Rep by its Proprietor Mr.M.Palani Raja
No.68-A Kumbakonam Road Panruti
[Petitioner in W.P.No.31522/15]

Vs

1 The Appellate Deputy Commissioner (CT) Cuddalore

2 The Commercial Tax Officer Panruti (Town) Assessment Circle Panruti

[Respondents]

Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the first respondent in Rc.A/1013/2015 and Rc.A/1012/2015 respectively quash the impugned proceedings dated 07/09/15 and further direct the first respondent to entertain the appeals and pass orders on merits.

For petitioner : Mr.V.Sundareswaran

For respondents : Mr.V.Haribabu, AGP(T)

C O M M O N 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. These writ petitions have been filed challenging the orders of the 1st respondent in Rc.A/1013/2015 and Rc.A/1012/2015 respectively dated 07/09/15 and to direct the 1st respondent to entertain the appeals and pass orders on merits.

3. The learned counsel for the petitioners submitted that the petitioners, being registered dealers in eversilver vessels on the file of the 2nd respondent, opted for compounded rate of tax under Section 3(4) of the TNVAT Act, since the turnover did not exceed Rs.50 lakhs. The deemed assessments were completed by the 2nd respondent vide orders dated 21.10.2013 and 25.03.2014 respectively determining the taxable turnover taxable at 0.5%. Thereafter, the 2nd respondent issued notices under Section 27(1)(a) dated 22.07.2014 for revision of assessment for fixing the escaped assessable turnover at 14.5%, based upon the web report of the Commercial Taxes Department. In response to the said notices, according to the learned counsel for the petitioners, though the petitioners filed detailed replies on 07.09.2014 and 07.08.2014 respectively, notices dated 27.04.2015 were issued invoking the penalty under Section 27(3) of the Act, which were also objected by the petitioners by their letter dated 28.05.2015. However, the 2nd respondent rejected all the contentions of the petitioners and passed the impugned orders dated 29.05.2015. On receipt of the said impugned orders, writ petitions in W.P.Nos.20609 and 20610 of 2015 were filed before this Court, which were dismissed on 10.07.2015 directing the petitioners to file appeals within a period of two weeks from the date of receipt of a copy of the said order, with a direction to the Registry to return the original impugned orders. The learned counsel for the petitioners would further submit that pursuant to the said order of this Court, since the order was pronounced in open Court and was hosted in the website of this Court, the petitioners preferred appeals before the 1st respondent, enclosing the attested down loaded order copy on 31.07.2015, which were received on 03.08.2015. However, the 1st respondent returned the papers vide proceedings dated 07.08.2015 stating certain defects. Thereafter, the petitioners represented the papers vide their letters dated 26.08.2015, which were received by the 1st respondent on 27.08.2015. On receipt of such papers, the 1st respondent rejected the appeals vide impugned orders dated 07.09.2015 on the ground of non-compliance of the order of this Court. Aggrieved over the same, the petitioners are before this Court.

4. The learned counsel for the petitioners would contend that when it is an admitted fact that the order of this Court is dated 10.07.2015, wherein a direction was issued to file appeals within two weeks from the date of receipt of a copy of the said order, the date of filing of the appeals had necessarily to be reckoned as on 03.08.2015, which is well within the time of two weeks and not as 27.08.2015, which relates to re-presentation of the appeal papers,

after rectifying the defects. He would further urged before this Court, the 2nd respondent would initiate recovery action at any time and he sought for allowing of the writ petition.

5. The learned Additional Government Pleader (Taxes) appearing for the respondent submitted that necessary direction may be issued to the appellate authority to entertain the appeals and pass appropriate orders on merits.

6. Admittedly, challenging the assessment orders for the year 2012-13, the petitioners preferred appeals and the same were returned for rectifying certain mistakes. Accordingly, the petitioners, complying those defects, re-submitted the papers, but, the same were returned on the ground of belated filing.

7. Considering the facts and circumstances of the case and in view of the submission made by the learned Additional Government Pleader (Taxes) appearing for the respondent that a direction may be given to the appellate authority to entertain the appeals and dispose of the same , the writ petitions are disposed of with the following directions:-

> "The petitioners are directed to re-present the appeal papers to the appellate authority within a period of two weeks from today and on such re-presentation, the appellate authority is directed to entertain the appeals and dispose of the same on merits".

No costs. Connected miscellaneous petitions are closed.

-Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1 The Appellate Deputy Commissioner (CT) Cuddalore

2 The Commercial Tax Officer
Panruti (Town) Assessment Circle Panruti

+2cc to Mr.R.SUNDARESHWARAN Advocate, S.R.No.54174 & 54175
+1cc to the Government Pleader, S.R.No.54216

W.P.Nos.31521 and 31522 of 2015

(CO)PPA
JD(07/10/2015)