IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.12.2015

Coram

The Hon'ble Mr.JUSTICE R.MAHADEVAN

W.P.No.38966 of 2015
and
M.P.No.1 of 2015

M/s.Kodak India (P) Ltd.
Rep by its Authorised Signatory
Ms.Meghana Joshi
No. 183 Arcot Road Vadapalani
Chennai 26.

[Petitioner]

Vs.

1. The Appellate Deputy
Commissioner (CT)
Central New Buildings
3rd Floor Chennai 6

2. The Assistant Commissioner (CT)
Vadapalani Assessment Circle
Chennai 6

[Respondents]

Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of Writ of Certiorarified mandamus to call for the records of the 1st respondent in SP. No.442/15 in APC.107/15 quash the impugned order dt 4.11.2015 and further direct the 1st respondent to hear the Appeal itself in APC. 107/15 without insisting upon any condition regarding payment of additional amount or furnishing security in the form of bank guarantee since the entire form F were received by the Authorised Representative on 7.11.2015.

For Petitioner : Mr. V.Sundareswaran

For Respondent : Mr.V.Haribabu
Additional Government Pleader

O R D E R

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

2. This writ petition is filed challenging the order of the 1st respondent in SP. No.442/15 in APC.107/15 dated 4.11.2015 and to direct the 1st respondent to hear the Appeal itself in APC. 107/15 without insisting upon any condition regarding payment of additional amount or furnishing security in the form of bank guarantee, since the entire form F were received by the Authorised Representative on 7.11.2015 and now to be placed before the appellate authority.

3.1 The petitioner, who is a registered dealer on the files of the 2nd respondent under the provisions of the TNVAT Act, 2006 and under the CST Act, 1956 is carrying on business in Photographic films, which becomes obsolete due to the recent advancement in technology, however, its survival is due to the patronage of very few customers. It is the case of the petitioner that for the assessment year CST 2011-12, an assessment order came to be passed on 15.06.2015, determining the total turnover as returned by the petitioner, but, rejected the claim regarding the concessional rate of tax as against Form C and disallowed the claim of exemption of stock transfer and raised a demand of Rs.4,27,32,168/-. Pursuant to the production of declaration forms, rectified order came to be passed on 06.07.2015, followed by order dated 31.07.2015, resulting in demand of Rs.92,13,084/-.

3.2 As against the order dated 15.06.2015, an appeal was preferred before the 1st respondent on 10.08.2015 by complying with the mandatory pre-deposit along with a stay application, however with delay petition. The 1st respondent, by condoning the delay, while passing orders on the stay application, directed the petitioner to pay 25% of the disputed tax and to furnish bank guarantee for the remaining amount. In the meantime, the petitioner was able to collect all the required Form F declarations, which is the subject in dispute before the 1st respondent. Though the petitioner requested the 1st respondent to modify the order of stay, the 1st respondent was not able to modify the same, since there is no provision under the Act. Instead the petitioner also requested to take up the appeal itself for hearing, which was also not done. Hence, the petitioner is before this Court.

4. After advancing the arguments, the learned counsel for the petitioner submitted before this Court that if Form F declarations are considered by the 1st respondent, there cannot be any liability, as far as the assessment year 2011-12 is concerned. Hence, the 1st respondent may be directed to take up the appeal at the earliest by considering the said declarations.

5. This Court finds some force in the argument advanced by learned counsel for the petitioner relating consideration of Form F declarations to be submitted by the petitioner by the 1st respondent while passing orders on the appeal filed by the petitioner.

6. Hence, in the interest of justice, this Court directs the petitioner to submit the Form F declarations to the 1st respondent within a period of two weeks from the date of receipt of a copy of this order and on such filing, the same shall be verified and orders passed on the appeal filed by the petitioner. Till such an order is passed, there shall not be any recovery.

The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.
rg

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Appellate Deputy
Commissioner (CT)
Central New Buildings
3rd Floor Chennai 6.

2. The Assistant Commissioner (CT)
Vadapalani Assessment Circle
Chennai 6.

+ 1 cc to Mr. V.Sundareswaran, Advocate Sr 66759.

+ 1 cc to The Spl.Govt.Pleader,(Taxes) Sr 66736.

RG/CO
KR/14/12