IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.39038 of 2015
and M.P.Nos.1 & 2 of 2015

M/s.Sri Dhanalakshmi Traders [Petitioner]
Rep. by its Partner K.Manikavelu
No.260, Bharathi Street Palankovil
Poondi, Tiruvannamalai District

Vs

1 The Commercial Tax Officer
Polur Tiruvannamalai 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.1853/2015 dated 4.11.2015 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 2013-2014 under TNVAT Act 2006 and disposed of in accordance with law.

For petitioner :Ms.R.Hemalatha

For respondents:Mr.V.Haribabu, AGP

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 hearing.

2. This writ petition has been filed challenging the return memo of the 2nd respondent in N.Dis.1853/2015 dated 4.11.2015 and to direct the 2nd respondent to entertain the appeal petition relating to the Assessment year 2013-2014 under TNVAT Act 2006 and dispose of the same in accordance with law.

3. According to the learned counsel for the petitioner, for the assessment year 2013-14, a notice dated 24.06.2015 was issued to the petitioner, who is a dealer in Cement and assessee on the files of the 1st respondent, in response to which, the petitioner replied vide letter dated 15.07.2015, however, brushing aside the same, the assessment order came to be passed vide order dated 20.08.2015 by the 1st respondent, which was served to one of the employees of the petitioner concern on 24.08.2015, who forgot to bring to the knowledge of the partners of the petitioner and therefore, according to the petitioner, appeal could not be filed in time. However,the same was filed before the 2nd respondent on 29.10.2015, by remitting 25% of the disputed tax on 28.10.2015. On such filing of appeal, the 2nd respondent has returned the appeal papers by return memo dated 04.11.2015 by stating that though the order has been served on 24.08.2015, the appeal papers were filed after a lapse of 64 days and hence the same cannot be admitted, it became time barred. Hence, the learned counsel for the petitioner has prayed for allowing of the writ petition.

4. For the assessment year 2013-14, an appeal was filed before the 2nd respondent, of course belatedly. Stating the same reason, the appeal papers were returned as not entertainable. For entertaining the appeal, the petitioner has also paid 25% of the tax being mandatory deposit. Hence, in the interest of justice, to give a quietus to this issue, this Court is of the view that yet another opportunity may be given to the petitioner.

5. In view of the above, without going into the merits of the matter, this writ petition is disposed of by directing the 2nd respondent to entertain the appeal, if the same is presented by the petitioner with two weeks from the date of receipt of a copy of this order, if it is otherwise in order and thereafter within a period of eight weeks, hear the appeal and decide the issue on merits and in accordance with law. No costs. Connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

rg

To

1 The Commercial Tax Officer
Polur Tiruvannamalai District

2 The Appellate Deputy Commissioner (CT)
Vellore Vellore District

1 cc to M/s.R. Hemalatha, Advocate, Sr. 66525
1 cc to the Spl.Government Pleader, (Taxes), Sr. 66733

W.P.No.39038 of 2015

VD (CO)
kk 23/12