IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.39389 of 2015
and M.P.Nos.1 and 2 of 2015

S.Anbu [Petitioner]
Propretor of Anbu Traders
No.69 Anna Nagar
Tiruppattur Vellore District

Vs

1 The Commercial Tax Officer
Tiruppattur Vellore District

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

Petition filed under Article 226 of the Constitution of India to issue 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.1178/2015 dated 15.7.2015 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 2008-2009 under TNVAT Act 2006 and disposed of the same 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.1178/2015 dated 15.07.2015 and to direct the 2nd respondent to entertain the

appeal petition relating to the Assessment year 2008-2009 under TNVAT Act 2006 and dispose of the same in accordance with law.

3.1 According to the learned counsel for the petitioner, for the assessment year 2008-09, a notice dated 20.10.2014 was issued to the petitioner, who is a dealer in leather and assessee on the files of the 1st respondent, stating that the petitioner has failed to prove the sufferance of tax on their purchases at the earlier stage as required under Section 17(2) of the TNVAT Act and hence proposed to add equal time addition towards probable suppression and also proposed to levy penalty under Section 27(3)(c) of the TNVAT Act. It is the case of the petitioner, though according to the 1st respondent, the notice dated 20.10.2014 was served through RPAD to the petitioner, calling for objection, the petitioner has not received the same and hence he could not file his objections. It is the further case of the petitioner that only on receipt of the demand notice for payment of tax and penalty, the petitioner came to know that the respondent has passed an order of assessment for the year 2008-09. Since the notice was not served, the petitioner requested for the supply of the certified copy of the same vide letter dated 28.04.2015 and the same was also issued.

3.2 Further, according to the learned counsel for the petitioner, aggrieved over the assessment order relating to the year 2008-09 dated 04.05.2015, which was served on 05.05.2015 in person, the petitioner preferred an appeal before the 2nd respondent on 20.05.2015, which is well within the prescribed time limit of 30 days. On such filing of appeal, the 2nd respondent has returned the appeal papers by return memo dated 08.06.2015 by stating that it is time barred by 5 months and date of realization of cheque is not known. Thereafter, another Return Memo in Rc.1046 of 2015 dated 29.06.2015 was issued to resubmit the application after rectifying the defects within 10 days from the date of receipt. Again, by another Return Memo dated 06.07.2015, same direction was issued. However, the 2nd respondent has returned the appeal papers in his Return Memo No.N.Dis.1178/2015 dated 15.07.2015 stating that assessment order was originally passed on 21.11.2014 and on 04.05.2015 a rectification order was passed and hence the appellant would have filed the appeal on receipt of the original order since all the issues involved in both the orders are one and the same. Hence, according to the learned counsel, the appellate authority rejected and returned the appeal papers as time barred.

3.3 At this juncture, learned counsel for the petitioner would submit that it would suffice if a direction is given to the 2nd respondent to entertain the appeal and dispose of the same within a time frame.

4. The learned Additional Government Pleader, on the other hand would submit that since the appeal was filed belatedly, the 2nd respondent has rightly returned the appeal papers.

5. For the assessment year 2008-09, an appeal was filed before the 2nd respondent after getting the certified copy of the same, since the original assessment order was not served on the petitioner in terms of Rule 19 of TNVAT Rules, 2007. Stating that the appeal is time barred, 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.

6. 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, without raising any issues with regard to limitation 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/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To
1 The Commercial Tax Officer
Tiruppattur Vellore District

2 The Appellate Deputy
Commissioner (CT) Vellore
Vellore District

+1 cc to Mr.R.Hemalatha, Advocate, sr.67113
+1 cc to Special Government Pleader (Taxes), sr.67215

W.P.No.39389 of 2015

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