IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.6984 of 2015
and
M.P.Nos.1 & 2 of 2015

M/s.Sri Venkatramana Paper Mills Pvt. Ltd.,
represented by its Managing Director
S.Sanjeevi,
No.15, Sree Vatsa Square,
M.T.P.Road,
Thudiyalur,
Coimbatore - 641 034. ... Petitioner

vs.

1.The Assistant Commissioner [CT] [FAC],
Saibabha Colony Assessment Circle,
Coimbatore.

2.The Appellate Deputy Commissioner [CT],
Coimbatore. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent in his impugned proceedings made in Ref.No.81/2015/A dated 24.02.2015, quash the same and further direct the second respondent to re-admit the appeal petition filed by the petitioner as per the representation dated 13.02.2015.

For Petitioner : Mr.R.Hemalatha
For Respondents : Mr.Cibi Vishnu
Additional Government Pleader (Taxes)

O R D E R

The petitioner has filed this Writ Petition seeking quash of proceedings of the second respondent passed in proceedings Ref.No.81/2015/A dated 24.02.2015 and a direction to the second respondent to re-admit the appeal petition filed by the petitioner as per the representation dated 13.02.2015.

2. Heard learned counsel for petitioner and learned Additional Government Pleader (Taxes).

3. According to the petitioner, the petitioner is a manufacturer/dealer in paper and assessee on the file of first respondent. The petitioner stated that the first respondent, by order dated 29.12.2014, has passed proceedings u/s.27(2) of Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'Act 2006') for the assessment year 2013-14. By such order, the first respondent has reversed the entire ITC claimed by the petitioner u/s.19(5) of the Act 2006. Aggrieved by the said order, the petitioner preferred an appeal on 30.01.2015 before the appellate authority viz., the second respondent herein, who returned the appeal directing the petitioner to deposit 25% of the disputed tax amount in terms of Section 51 of Act 2006. Petitioner already deposited a sum of Rs.12,00,000/- as early as on 24.09.2010 vide cheque No.260736 and that the petitioner had fulfilled the requirements of Section 51 of the Act 2006. According to the petitioner, the return of appeal by the second respondent on the ground that the petitioner has not fulfilled the conditions contemplated u/s.51 of the Act 2006 is incorrect.

4. Learned Additional Government Pleader (Taxes) contended that the petitioner will have to deposit 25% of the total amount, if disputed by the petitioner and that he is not aware whether the said amount has already been deposited by the petitioner.

5. For the sake of convenience, Section 51 of the Act 2006 is extracted hereunder:

> "Section 51. Appeal to Appellate Deputy Commissioner. - (1) Any person objecting to an order passed by the appropriate authority under section 22, section 24, section 26, sub-sections (1), (2), (3) and (4) of section 27, section 28, section 29, section 34 or sub-section (2) of section 40 other than an order passed by an Deputy Commissioner (Assessment) may, within a period of thirty days from the date on which the order was served on him, in the manner prescribed, appeal to the Appellate Deputy Commissioner having jurisdiction:
>
> Provided that the Appellate Deputy Commissioner may, within a further period of thirty days admit an appeal presented after the expiration of the first mentioned period of thirty days if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the first mentioned period:
>
> Provided further that in the case of an order under section 22, section 24, section 26, sub-sections (1), (2), (3) and (4) of section 27, section 28 or section 29, no appeal shall be entertained under this

sub-section unless it 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 twenty-five per cent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant.

Sec.51(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by such fee not exceeding one hundred rupees as may be prescribed.

Sec.51(3) In disposing of an appeal, the Appellate Deputy Commissioner may, after giving the appellant a reasonable opportunity of being heard, and for the sufficient reasons to be recorded in writing -

(a) in the case of an order of assessment -

(i) confirm, reduce, enhance or annul the assessment or the penalty or both;

(ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed: or

(iii) pass such other orders as he may think fit; or

(b) in the case of any other order, confirm, cancel or vary such order:

Provided that at the hearing of any appeal, the appropriate authority shall have the right to be heard either in person or by a representative.

Sec.51(4) Notwithstanding that an appeal has been preferred under sub-section (1), the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred:

Provided that the Appellate Deputy Commissioner may, in his discretion, give such directions as he thinks fit in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to his satisfaction, in such form and in such manner as may be prescribed:

Provided further that the directions given under the first proviso shall stand vacated, if no order is passed under sub-section (3) within a period of one hundred and eighty days of the issue of order under the said proviso."

6. From a reading of Section 51 of the Act 2006, it is clear that the petitioner will have to pay 25% of the disputed amount for preferring an appeal u/s.51 of the Act 2006, which is a condition precedent. The petitioner's contention is that in order to avoid payment of interest, the petitioner has deposited 25% of the amount well before the order was passed. It is not that over and above the 25% of the disputed amount, which has been already deposited, the

petitioner will have to pay another 25% on the balance amount. This Court finds much force in the contention of learned counsel for petitioner.

This Writ Petition is allowed. The appellate authority viz., the second respondent herein, is directed to entertain the appeal and stay petition, if any filed by the petitioner and pass appropriate orders on merits and in accordance with law. However, as disputed by respondents, if 25% of the disputed amount has not been paid, the petitioner will have to deposit such amount. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

1.The Assistant Commissioner [CT] [FAC],
Saibabha Colony Assessment Circle,
Coimbatore.

2.The Appellate Deputy Commissioner [CT],
Coimbatore.

+ 1 cc to Mrs. R. Hemalatha, Advocate SR.13959
+ 1 cc to Special Government Pleader sR.14084

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GGK(CO)
Eu 30.03.15