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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2015

CORAM:
THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.(MD)No.2883 of 2015
and
M.P.No.1 of 2015

Tvl.Vijay Traders,
Represented by its Proprietrix Mrs.Josephin,
Padanthulamoodu, Kanyakumari District. : Petitioner

Vs.

1.The Appellate Deputy Commissioner [CT] [FAC],
Commercial Taxes Buildings,
Reserve Land, Palayamkottai 627 002.

2.The Assistant Commissioner, [CT][FAC],
Kuzhithurai, Kanyakumari District. : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorarified Mandamus to call for the records in MP.No.6 of 2014, dated 06.01.2015, on the file of the first respondent and quash the same as illegal, arbitrary and against law, and direct the first respondent herein, namely, the Appellate Deputy Commissioner [CT][FAC], Tirunelveli, to entertain the appeal and decide the same on merits.

For Petitioner : Mr.M.Azeem

For Respondents : Mr.A.Muthukaruppan
Additional Government Pleader
takes notice

O R D E R

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Mr.A.Muthukaruppan, learned Additional Government Pleader, takes notice for the respondents. By consent, the Writ Petition is taken up for disposal at the stage of admission itself.

2. The only ground of attack made by the learned counsel for the petitioner is that the Appellate Authority dismissed the appeal filed by the petitioner on the ground it is barred by limitation. According to the petitioner, the delay is only three days, whereas, according to the learned Additional Government Pleader, the delay is seven days.

3. In similar circumstances, this Court in W.P.[MD].Nos.10538 and 10539 of 2014, dated 01.07.2014, while condoning the delay, permitted the petitioner therein to file an appeal, subject to certain conditions and

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directed the authority concerned to entertain the appeal, without insisting upon the limitation point. It is useful to extract the relevant portion of the said order, which reads as under:-

"Though the petitioner has paid the 25% of the disputed tax in time, the appeal was filed on 26.09.2013 with the delay of 2 days before the 1st respondent, since the partners of the firm was on the pilgrimage tour in the North India and they were not able to return to home town as planned. However, the 1st respondent had returned the appeal papers vide impugned proceedings dated 27.09.2013, stating that the appeal was not presented for consideration within 60 days from the date of receipt of the assessment order. Hence, the grievance of the petitioner was not properly redressed by the 1st petitioner. Therefore, the petitioner has come forward with the present writ petitions.

3.When this matter was taken up for consideration, the learned counsel for the petitioner submitted that in the judgment passed by a Division Bench of this Court dated 25.02.2014, in W.A.No.279 of 2014 in the case of M/s.Murugan Textiles, Palladam v. The Commercial Tax Officer, Palladam, liberty was given to the appellant / writ petitioner therein to file an appeal and following the same, similar order may be passed.

4.Heard the learned counsel on either side.

5.Considering the averments made in the writ petitions and also the submissions made by the learned counsel on either side, this Court is constrained to pass the following order:

6.The petitioner herein is directed to pay the balance arrears of tax, within a period of four weeks from the date of receipt of a copy of this order. On making such payment, the petitioner is at liberty to file the appeals before the Appellate Authority within a period of one week from the date of making such payment, and if the papers are in order, the Appellate Authority shall entertain the appeals without insisting upon limitation point and dispose the same on merits and in accordance with law, as expeditiously as possible."

4. Following the said order, the impugned order, dated 06.01.2015, passed by the first respondent is set aside and the petitioner is directed to pay 25% of the tax demand, apart from the mandatory amount of 25% of tax to be paid, along with the appeal as a condition precedent, within a period of three weeks from the date of receipt of a copy of this order. While making such payment, the petitioner is at liberty to file an appeal before the authority concerned and on such payment, the authority concerned will entertain the appeal, without insisting upon the question of limitation and dispose of the same, on merits and in accordance with law, as expeditiously as possible.

5. The Writ Petition is allowed as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar

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sub Assistant Registrar(c.s)

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To

1.The Appellate Deputy Commissioner [CT] [FAC],
Commercial Taxes Buildings,
Reserve Land, Palayamkottai 627 002.

2.The Assistant Commissioner, [CT][FAC],
Kuzhithurai, Kanyakumari District.

+1cc to Special Government Pleader in SR.No 11830.

+1cc to M/S. M.Azeem, Advocate in SR.No. 11449

TS/07.04.2015/3P-5C

ORDER MADE IN
W.P.(MD)No.2883 of 2015

DATED – 10.03.2015

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