In the High Court of Judicature at Madras

Dated : 09.6.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.19451 to 19455 of 2016
& WMP.Nos.16862 to 16871 of 2016

M/s.Ampex Communications (I) Pvt. Ltd., rep.by its Authorized Signatory ...Petitioner in all WPs

Vs

1.The Appellate Deputy Commissioner (CT), Central Chennai, Chennai-6.

2.The Assistant Commissioner (CT), Kilpauk Assessment Circle, Chennai-10. ..Respondents in all WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records of the second respondent vide his orders of assessment respectively in TIN : 33110541679/2007-08, TIN : 33110541679/2008-09, TIN : 33110541679/ 2009-10, TIN : 33110541679/2010-11 and TIN : 33110541679/2011-12 dated 11.12.2015, quash the same as illegal and unconstitutional and direct the second respondent to pass fresh orders after affording personal opportunity to verify the books of accounts and to pass orders in accordance with law.

For Petitioner : Mr.A.Ravichandran

For Respondents: Mr.S.Manohar Sundaram, AGP

COMMON ORDER

Mr.S.Manohar Sundaram, learned Additional Government Pleader takes notice for the respondents. Heard both. By consent, the writ petitions are taken up for final disposal.

2. The petitioner, who is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956, has filed these writ petitions challenging the orders of assessment passed by the second

respondent for the assessment years from 2007-08 to 2011-12. As against the orders of assessment, the petitioner filed appeals before the first respondent on 4.4.2016. As the petitioner was required to pre-deposit 25% of the disputed tax for each of the assessment years, the same was remitted by the petitioner well prior to the presentation of the appeals i.e. 26.2.2016 before the second respondent - Assessing Officer.

3. However, the appeal papers were presented before the first respondent belatedly and the petitioner sought for condonation of delay. The appeal papers were returned by the first respondent stating that the appeal papers have been presented beyond the condonable period and that the Appellate Authority has no jurisdiction to condone the delay beyond the period of 30 days. Therefore, the petitioner has approached this Court challenging the orders of assessment themselves.

4. Learned counsel for the petitioner submitted that the impugned orders of assessment are based on surmises and conjectures and not based on books of accounts and that the penalty imposed under Section 27(3) of the TNVAT Act, 2006 is excessive and therefore, the petitioner should granted an opportunity to produce the books of accounts before the Assessing Officer, so that they may have an opportunity to put forth all the submissions.

5. In support of his contention, the learned counsel for the petitioner referred to the decisions of the Hon'ble Division Bench of this Court in the case of M.Krishnaswamy Vs. Registrar, Tamilnadu Taxation Special Tribunal [reported in 2004-05 (10) TNCTJ 168].

6. The orders passed by the Appellate Authority returning the appeal papers themselves as presented beyond the condonable period are perfectly justified. However, it is seen that the petitioner has remitted 25% of the disputed tax amount for each of the assessment years on 26.2.2016 and if such a date is reckoned, the appeals would be well within limitation.

7. In the affidavits in support of these writ petitions, the petitioner has stated that certain unavoidable circumstances in the office of the auditors of the petitioner caused the delay of 59 days in presenting the appeals and that petitioner's bona fides can be assessed by the fact that within the period of limitation, they deposited 25% of the disputed tax for each assessment year. Thus, considering the facts and circumstances of the case, this Court is of the view that the delay can be condoned in the instant case subject to certain conditions.

8. In the light of the above, the writ petitions are disposed of by setting aside the memos issued by the Appellate Authority dated 25.4.2016 returning the appeal papers and with a direction to the petitioner to pay another 15% of the disputed tax, in addition to 25% already paid, for each of the assessment years. Along with the proof of such payment of 15%, they shall represent the appeal papers before the first respondent, who shall entertain the appeals and decide the same on merits and in accordance with law without insisting on any further payment or bank guarantee. In other words, if the petitioner pays additional 15% of the disputed tax for each assessment year as per the above direction, the impugned orders of assessment dated 11.12.2015 shall remain stayed till the appeals are heard and disposed of by the first respondent on merits and in accordance with law. The petitioner is directed to effect payment of 15% of the disputed tax for each of the assessment years within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Appellate Deputy Commissioner (CT),
Central Chennai, Chennai-6.
2.The Assistant Commissioner (CT),
Kilpauk Assessment Circle, Chennai-10.

RS

1 CC to Mr.A.Ravichandran, Advocate, sr.31169
1 cc to Special Government Pleader, sr.31270

WP.Nos.19451 to 19455 of 2016&
WMP.Nos.16862 to 16871 of 2016

scd co
kra 16.06.2016