IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.20177 of 2016
and
W.M.P.Nos.17350 & 17351 of 2016

Tvl.Thirumalai Hardware and Rolling
Shutters and Spares
Rep by its Proprietor
S.Nanthakumar
No.45/25, Sathyamurthy Road
Arni - 63.2 301. .. Petitioner

..Vs..

1.The Appellate Deputy Commissioner
Commercial Taxes Department
Vellore

2.The Commercial Tax Officer
Arni, Tiruvannamalai District. .. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified mandamus to call for the records of the impugned Return memo in N.Dis.659/2016 dated 11.05.2016 of the 1st respondent and to quash the same and to consequently direct the 1st respondent to take up the appeal dated 21.03.2016 and dispose of the same after affording sufficient opportunity of hearing to the authorized representative of the petitioner concern.

For Petitioner : Mr.R.Gopinath
for M/s.MCGAN Law Firm
For Respondent : Mr.S.Kanmani Annamalai, A.G.P.,

ORDER

Heard Mr.R.Gopinath, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent and with the consent of the either side, the writ petition itself is 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 (TNVAT Act) has filed the present writ petition questioning the 'Return Memo' dated 11.05.2016 issued by the first respondent, who is the appellate authority over the orders passed by the second respondent/Assessing Officer.

3.The petitioner preferred the appeal as against the order passed by the second respondent dated 25.08.2015 and the appeal was presented on 21.03.2016. However, the said appeal was returned vide 'Return memo' dated 29.03.2016 stating that the original assessment order was passed on 25.08.2015 and the appeal having been filed after a lapse of 6 ½ months is time barred. The petitioner submitted a representation stating that they have received the copy of the order of assessment dated 25.08.2015 only on 25.02.2016. On receipt of the said representation, the first respondent issued another memo dated 07.04.2016 stating that the date of service of the assessment order has to be certified by the concerned Assessing Officer.

4.Accordingly, the petitioner approached the Assessing Officer who by certificate dated 06.05.2016 certified that the assessment order was served on the petitioner only on 25.02.2016. If that be the date, the petitioner's appeal memorandum presented on 21.03.2016 is well within the period of limitation. However, without taking the appeal on file, the first respondent issued another 'Return memo' stating that there is an extraordinary delay of 6 ½ months. Thus, the observation made by the first respondent in the return memo is untenable.

5.Initially the first respondent wanted the petitioner to certify the date of service of the original order of assessment. That has been done by the petitioner and the certificate states that the petitioner received the copy of the order only on 25.02.2016. Therefore, the said certificate having not been questioned by the first respondent shall bind the first respondent and he shall entertain the appeal and consider the same in accordance with law.

6.Accordingly, the impugned 'Return Memo' dated 11.05.2016 is set aside and the writ petition stands allowed. The petitioner is directed to represent the appeal papers along with the copy of this order and the first respondent shall entertain the appeal petition, subject to the petitioner effecting compliance of all the other requirements. Consequently, connected miscellaneous petitions are closed. No costs.

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-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

1.The Appellate Deputy Commissioner
Commercial Taxes Department
Vellore

2.The Commercial Tax Officer
Arni, Tiruvannamalai District.

+ 1 cc to Mr.Mc.gan Law Firm, Advocate SR 32885

+ 1 cc to Govt.Pleader SR 33321

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aa27/07/2016

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and
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