IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.08.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.31864 and 31865 of 2015 (2 cases)
and
M.P.Nos.1 and 2 of 2015 in each case.

M/s.Hi Style India Pvt. Ltd.,
(formerly M/s. Hi Style Apparels)
rep. by its Managing Director, R.Kiron.
No.1652 - G, 2nd Avenue Anna Nagar,
Chennai - 600 040, ...Petitioner in both W.Ps.

Vs

1. The Deputy Commissioner of
Commercial Taxes (Appeal)
Chennai Central, Greams Road, Egmore,
Chennai - 600 006.

2. The Assistant Commissioner,
(Commercial Taxes Main)
Amaindakarai, Assessment Circle,
Kilpauk, Chennai - 600 010.

3. The Branch Manager,
Axis Bank, No.82, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004. ...Respondents in both W.Ps.

Prayer in W.P.No.31864 of 2015

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records of the second respondent, made in TIN No.33581025499, dated 25.06.2016, addressed to the third respondent, and the consequential order of the first respondent, in his proceedings ATM 823/2015, dated 10.08.2015, insofar as the Appeal papers of the petitioner were returned and to quash the same, and consequently, to direct the respondents 1 and 2 to return/refund the sum of Rs.5,70,895/-, arbitrarily recovered from the petitioner, and to pay interest at 18% p.a. from the date of recovery till the date of refund/return.

Prayer in W.P.No.31865 of 2015

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records of the second respondent made in his proceedings in TIN 33361022322/2008-09, dated 05.12.2013 (photocopy received on 18.03.2015) and to quash the same.

For Petitioner	:	Mr.Silambanan Senior Counsel for M/s.Kaavya Silambanan
For Respondents	:	Mr.S.Manoharan Sundaram Additional Government Pleader

COMMON O R D E R

Heard Mr.Silambanan, learned Senior Counsel, assisted by M/s.Kaavya, the learned counsel for the petitioner, and Mr.S.Manoharan Sundaram, learned Additional Government Pleader, accepting notice for respondents, and with their consent, the Writ Petitions are taken up for final disposal.

2. After hearing the learned counsel for the parties, and perusing the materials papers, the only issue, involved in these Writ Petitions is as to whether this Court should permit the petitioner to file Appeal as against the order of assessment, for the assessment year 2008-09.

3. The contention raised by the petitioner is that the assessment order was not served on the petitioner/assessee, M/s.Hi Style India Pvt. Ltd., for the relevant assessment year 2008-09.

4. It appears that, the Firm, named "M/s.Hi Style Apparels" had merged with the petitioner Company, "M/s.Hi Style India Pvt. Ltd." There was one another Firm, called M/s.Hi-Style Fashions, and it is seen that pre assessment notice was served on M/s.Hi-Style Fashions, and the assessment has been completed. The petitioner would state that they had no opportunity to prefer Appeal against the assessment order. Therefore, they preferred Appeal against the order of attachment, and the Appellate Authority has returned it on the ground that the order of assessment was passed in the year, 2010, and the Appeal has been filed in the year, 2015 and hence, the Appeal cannot be entertained. The Appellate Authority may be right in returning the Appeal Memorandum, however, in the peculiar facts and circumstance of the case, the assessment have been completed, without serving notice on M/s.Hi Style Apparels, and entire tax has been recovered from the petitioner, in these circumstances, this Court is of the view that the petitioner should be given an opportunity to test the correctness of the assessment made on M/s.Hi-Style Apparels for the assessment year 2008-09.

5. Accordingly, there will be a direction to the second respondent to furnish copy of the assessment order for the year 2008-09 made in the name of M/s.Hi Style Apparels to the petitioner, within a period of three weeks from the date of receipt of a copy of this order. On receipt of the assessment order, the petitioner is entitled to prefer Appeal within a period of 30 days from the date of receipt of a certified copy of the assessment year. On such Appeal being preferred, the Appellate Authority shall entertain the same without reference to limitation aspect. As stated above, this direction is issued, taking into consideration the fact that the entire tax and penalty has been recovered from the petitioner Firm. The Appellate Authority, while considering the issue regarding pre deposit, will take into consideration the payment already effected by the petitioner, when they had preferred Appeal against the Form-O notice, which has been returned by the Appellate Authority.

6. The Writ Petitions are disposed of, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.
sd

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

True Copy

Sub-Assistant Registrar

To

1. The Deputy Commissioner of
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+ 1 cc to Special Govt.Pleader (Taxes) SR 43593

gj(co)
prk29/8 Writ Petition Nos.31864 and 31865 of 2015

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