IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.33831 of 2015
and
M.P.No.1 of 2015

M/s.Florind Uppers Pvt. Limited
III Floor, Maskur
No.1, Krishnamma Road
Nungambakkam
Chennai - 600 034. .. Petitioner

..Vs..

The Assistant Commissioner (CT) (FAC)
Nungambakkam Assessment Circle
Chennai - 6. .. Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the respondent in Order dated 31.08.2015 in TIN/TIN/33170461524/2011-12 and quash the same.

For Petitioner : Mr.Suhrith Parthasarathy
for Mr.Aditya Reddy

For Respondent : Mr.S.Kanmani Annamalai,
Addl.Govt.Pleader

ORDER

Heard Mr.Suhrith Parthasarathy, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent and with the consent of either side, the writ petition itself is taken up for final disposal.

2.The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) on the file of the respondent. The petitioner has challenged the order of assessment dated 31.08.2015 for the year 2011-12, raising several contentions. Admittedly, the impugned order is an appellable order. Since disputed questions of fact are involved in the matter, this Court is of the view that the petitioner should necessarily avail the appellate remedy, as the provisions of the Act provide an hierarchy of remedies to the dealer. The impugned proceedings arising out of the taxation statute, the petitioner should not be permitted to bye-pass such remedy, especially when the petitioner had been afforded a reasonable opportunity to put forth their objections and they were granted an opportunity of personal hearing.

3.In the light of the above, the petitioner is to be relegated to file an appeal before the appellate authority. At the time, when the writ petition was entertained, an order of interim stay was granted subject to the condition that the petitioner pays 25% of the penalty which the petitioner has complied with and the same has been recorded while making the interim order absolute.

4.Therefore, there will be a direction to the petitioner to file an appeal before the Appellate Authority and if such an appeal is filed within a period of thirty days from the date of receipt of a copy of this order, the Appellate Authority shall not reject the appeal on the ground of limitation.

5.Furthermore, since the appeal itself is against the levy of penalty, the question of directing pre-deposit also would not arise. That apart, the petitioner had already paid 25% of the penalty and therefore, the Appellate Authority is directed to decide the appeal on merits and in accordance with law, within a reasonable time. It is made clear that till the appeal is heard and disposed of by the Appellate Authority, no recovery proceedings shall be initiated to recover the balance penalty amount.

6.The writ petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed. No costs.

pgp

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner (CT) (FAC)
Nungambakkam Assessment Circle
Chennai - 6.

KR/6/9/16

W.P.No.33831 of 2015
and
M.P.No.1 of 2015