IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.21308 of 2016
and
W.M.P.Nos.18241 & 18242 of 2016

M/s.Azhar Timber & Saw Mill
No.303/1A, Thiruthani Road
Sholinghur - 631 102
Vellore District
Rep by its Proprietor
Mr.A.Babu .. Petitioner

..Vs..

1.The Appellate Deputy Commissioner (CT)
Vellore District
Vellore

2.The Assistant Commissioner (CT)
Ranipet Assessment Circle
Ranipet, Vellore 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 in respect of return memo bearing N.Dis.2056/2015 dated 07.12.2015 issued by the 1st respondent rejecting the appeal preferred by the petitioner against the assessment order of the 2nd respondent and quash the same as illegal and arbitrary and consequently direct the 1st respondent to entertain the appeal filed by the petitioner.

For Petitioner : Mr.C.Murali

For Respondent : Mr.S.Kanmani Annamalai, A.G.P.,

ORDER

Heard Mr.C.Murali, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents 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) and the Central Sales Tax Act, 1956 (CST Act) dealing with timber and operating a saw mill has challenged the order passed by the Appellate Authority rejecting the petitioner's appeal as not maintainable. The reason for rejection is that the pre-deposit amount that the petitioner is required to make i.e., 25% of the disputed tax is not paid within time. For the appeal to have been presented in a proper manner, the petitioner should have filed the appeal on or before 30.09.2015 and effected deposit of 25% of the disputed tax. Along with a delay, the petitioner could have filed on or before 30.10.2015.

3.It is not in dispute that the petitioner had filed the appeal within the 60 days period. But with regard to the 25% disputed tax, which is Rs.3,15,723/, the petitioner should have remitted the same well before the cut off date. It is not in dispute that the petitioner did not remit the amount within the time and he has paid a sum of Rs.2,12,723/- belatedly and there is a further amount of Rs.1,03,000/- to be paid.

4.The learned counsel for the petitioner, on instructions submitted that one opportunity may be granted to the petitioner and the petitioner will pay the balance amount within 15 days, failing which the petitioner's valuable right of appellate remedy will be lost.

5.After hearing the learned Additional Government Pleader on the above submission, considering the peculiar facts and circumstances of the case and taking note of the fact that the appellate remedy is not only effective but an efficacious remedy in which the petitioner will be entitled to canvass all factual issues, this Court is inclined to grant one opportunity to the petitioner.

6.Accordingly, if the petitioner pays the remaining amount of the disputed tax of Rs.1,03,000/- within a period of 15 days from the date of receipt of a copy of this order, the Appellate Authority may consider the appeal on merits, without rejecting the same on the ground of limitation. However, if the petitioner fails to comply with the conditions, the benefit of this order will not enure to the petitioner and the writ petition will be automatically dismissed, without any further reference.

7.The writ petition is disposed of accordingly. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Appellate Deputy Commissioner (CT),
Vellore District,
Vellore.

2.The Assistant Commissioner (CT),
Ranipet Assessment Circle,
Ranipet, Vellore District.

+1cc to the Special Government Pleader Sr.34856
+1cc to Mr.C.Murali, Advocate SR.34825

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and
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srg 13/07/2016