

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.21362 to 21364 of 2016
and
W.M.P.Nos.18287 to 18292 of 2016

M/s.Babu Earth Movers

Rep by its Proprietor - M.Babu

No.1190/6, Kottamitta Village & Post

Gudiyatham Taluk

Vellore District.

... Petitioner in all the WPs

...Vs...

1.The Commercial Tax Officer

Gudiyatham (East)

Gudiyatham

Vellore District

2.The Appellate Deputy Commissioner [CT]

Commercial Taxes Building

Vellore

Vellore District

... Respondents in all the WPs

Prayer in W.P.No.21362 of 2016:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent in his impugned Return Memo made in N.Dis.660/16 dated 11.05.2016 and quash the same as illegal and contrary to the scheme of the Act and further direct the 2nd Respondent to entertain the appeal petition relating to the Assessment year 2008-2009 under TNVAT Act, 2006 and disposed of in accordance with law.

Prayer in W.P.No.21363 of 2016:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent in his impugned Return Memo made in N.Dis.661/16 dated 11.05.2016 and quash the same as illegal and contrary to the scheme of the Act and further direct the 2nd Respondent to entertain the appeal petition relating to the Assessment year 2009-2010 under TNVAT Act, 2006 and disposed of in accordance with law.

Prayer in W.P.No.21364 of 2016:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent in his impugned Return Memo made in N.Dis.662/16 dated 11.05.2016 and quash the same as illegal and contrary to the scheme of the Act and further direct the 2nd Respondent to entertain the appeal petition relating to the Assessment year 2010-2011 under TNVAT Act, 2006 and disposed of in accordance with law.

For Petitioner
in all WPs : Ms.R.Hemalatha

For Respondents
in all WPs : Mr.S.Kanmani Annamalai, A.G.P.,

COMMON ORDER

Heard Ms.R.Hemalatha, 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 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 (TNVAT Act) has filed these writ petitions challenging the Return Memo issued by the appellate authority rejecting the petitioner's appeal petitions as not admissible on the ground that it has not been represented within time and no application has been filed seeking for condonation of delay in representation.

3.It is not in dispute that the petitioner has paid 25% of the disputed tax as certified by the Assessing Officer by certificate dated 06.05.2016. But the said payment is also made belatedly. From the perusal of the impugned Return Memo, it is seen that the reason for rejection of the petitioner's appeal petition is on the ground that the appeal has not been represented within the time permitted.

4.Undoubtedly, the appellate remedy provided under the provisions of the TNVAT Act is a valuable remedy as the appellate authority will be able to re-appreciate the factual position. Therefore, taking into consideration of the facts and circumstances of the case and that the petitioner has paid 25% of the disputed tax, though belatedly, this Court is of the view that an opportunity should be granted to the petitioner to pursue the appeal remedy.

5. Accordingly, these writ petitions are allowed and the impugned memo is set aside. The petitioner is directed to represent the appeal papers along with a copy of this order and if the same is done, the appellate authority shall entertain the appeal and proceed in accordance with law. Consequently, connected miscellaneous petitions are closed. No costs.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Commercial Tax Officer
Gudiyatham (East)
Gudiyatham
Vellore District

2. The Appellate Deputy Commissioner [CT]
Commercial Taxes Building
Vellore
Vellore District

+1 cc to Spl. Govt. Pleader, sr. 34863

+3 cc's to Ms. R. Hemalatha, advocate, sr. 34519.

rj(co)
krd 23/7

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