IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.6.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.21493 of 2016 and
WMP.Nos.18366 and 18367 of 2016

M/s.Azhar Timber & Saw Mill,
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

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in respect of return memo bearing N.Dis.2055/2015 dated 7.12.2015 issued by the 1st respondent rejecting the appeal preferred by the petitioner against the assessment order of the 2nd respondent, 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 Respondents : Mr.V.Haribabu, AGP

ORDER

Mr.V.Haribabu, learned Government Advocate takes notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner, which is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956 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., the admitted tax and 25% of the disputed tax is not paid within time.

3. Against the order of assessment passed by the Commercial Tax Officer, Ranipet (SIPCOT), the petitioner filed an appeal before the first respondent. To entertain the appeal before the first respondent, the petitioner should have filed the appeal on or before 30.9.2015 and effected payment of the admitted tax and 25% of the disputed tax. With a delay, at least the petitioner could have filed the appeal on or before 30.10.2015.

4. It is not in dispute that the petitioner had filed the appeal beyond the 60 days period. But, with regard to the payment of the admitted tax and 25% of the disputed tax, which comes to Rs.5,70,487/-, the petitioner should have remitted the same well before the cut off date. It is also not in dispute that the petitioner remitted only a sum of Rs.3,73,197/- that too belatedly and in instalments and that a sum of Rs.1,97,290/- is still due.

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

6. 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 an effective remedy, but also 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.

7. Accordingly, the writ petition is disposed of with a direction to the petitioner to pay the remaining amount of Rs.1,97,290/- (Rupees one lakh ninety seven thousand two hundred and ninety only) within a period of 15 days from the date of receipt of a copy of this order. On receipt of such payment, the Appellate Authority shall consider the appeal on merits without rejecting the same on the ground of limitation. However, if the petitioner fails to comply with the above condition, the benefit of this order will not enure to the petitioner and the writ petition will be automatically dismissed without any further reference to this Court. Mo costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CS VI)

//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 Mr.C.Murali, Advocate Sr.34824
+1cc to Special Government Pleader Sr.35436

WP.No.21493 of 2016 &
WMP.Nos.18366 & 18367
of 2016

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srg 14/07/2016