IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.39526 of 2015

Tvl. Times Internet Limited,
Plot No.391,
Udyog Vihar, Phase-III,
Gurgaon,
Haryana 122 016 ... Petitioner

Vs

1. The Appellate Deputy Commissioner
   of Commercial Taxes,
   Chennai (East),
   Greams Road,
   Chennai 600 006
2. The Commercial Tax Officer,
   Kotturpuram Assessment Circle,
   46, Greenways Road,
   R.A.Puram,
   Chennai 600 028. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 2nd respondent to acknowledge the date of the receipt of the certified order copy dated 12.3.2015 as 27.08.2015 and consequently direct the 1st respondent to accept the appeal filed by the petitioner.

For Petitioner : Mr.Sandeep Bagmar

For Respondent : Mr.V. Haribabu
Addl. Govt. Pleader

O R D E R

The present Writ Petition has been filed to direct the 2nd respondent to acknowledge the date of the receipt of the certified order copy dated 12.3.2015 as 27.08.2015 and consequently direct the 1st respondent to accept the appeal filed by the petitioner.

2. The petitioner, who is engaged in the business of trading of goods, display of advertisement, news, information, content, astrology, deals and offers etc., through e-commerce, is a registered delaer under Tamilnadu Value Added Tax Act, 2006 and Central Sales Tax Act, 1956. The petitioner and the business segment of Times of India, which is run by M/s.Bennett Coleman and Company Ltd., are operated at the same premises at No.126/127, Chamiers Road, Nandanam, Chennai 600 035 as the petitioner is subsidiary of M/s.Bennett Coleman and Company Ltd. A spot inspection was carried out by VAT authorities at the registered place of business and in consequence of inspection, the petitioner was issued with a notice dated 10.11.2014 under Section 22(2) of Tamilnadu Value Added Tax Act, 2006 alleging that the credit payments amounting to Rs.14,81,408/- reflected in the bank statement of the petitioner for the assessment year 2013-2014 in respect of Chennai Branch relates to sales turnover and the same is treated as suppression of sales and as per section 27(1)(a) of Tamilnadu Value Added Tax Act, 2006, it was assessed as turnover and after adding an equal amount as probable omission , it amounts to Rs.29,62,816/- which is subject to Value Added Tax at 14.5% amounting to Rs.4,29,608/-, upon which, penalty of Rs.3,22,206/- under section 27(3) of the Act was also levied. For the said notice, the petitioner replied through its reply dated 19.1.2015 stating that the credit payments amounting Rs.14,81,408/- pertains to the advertisement related services instead of the revenue from sale of goods and applicable service tax has been deposited on these transactions. Thereafter, the petitioner received summons dated 19.1.2015 from 2nd respondent to appear in person on 27.1.2015, in consequent of which, though the authorized representative of the petitioner appeared on the designated day, matter was adjourned to 2.2.2015 due to non availability of the concerned officer . Again on 2.2.2015, the authorised representative of the petitioner appeared before the respondent and explained about the documents already submitted. Thereafter, on 12.3.2015 the 2nd respondent passed an assessment order rejecting all the submissions and documents confirming the demand of Rs.7,51,814/-.

3. It is the case of the petitioner that though as per the information received from the office of the 2nd respondent, the certified order copy was sent by registered post on 12.3.2015 to the petitioner's Chennai address, till date, the petitioner has not received any certified copy from the 2nd respondent through registered post. Hence the petitioner was not able to file appeal under section 51 of the Act within 30 days of the receipt of order copy before the Appellate Authority. Thereafter, the petitioner's authorised representative received a photo copy of the order 12.3.2015 by hand on 27.5.2015. Whileso, the 2nd respondent issued notice dated 28.5.2015 attaching the bank account of the petitioner and on coming to know the same, the petitioner immediately informed the 2nd

respondent by letter dated 8.6.2015 not to act upon the Bank attachment as it is in process of filing the appeal. On 14.7.2015, the petitioner requested the 2nd respondent, the certified true copy of the order dated 12.3.2015 and in response to the same, the petitioner was issued with a notice dated 27.7.2015 on 13.8.2015 stating that the photocopy of the order was provided to the authorised representative of the petitioner on 27.5.2015 and the same should be considered as the date of the service of the order and after diligent efforts of the petitioner, the certified copy of the order dated 12.3.3015 was served on the petitioner on 27.8.2015. Pursuant to the same, the petitioner immediately filed appeal before the 1st respondent Appellate Authority on 27.8.2015 along with pre-deposit. But the 1st respondent returned the appeal filed by the petitioner vide defect notice dated 27.8.2015 received on 3.9.2015. The petitioner wrote a letter to the 2nd respondent on 15.09.2015 requesting to acknowledge the fact that the actual receipt of the certified copy of the order is on 27.8.2015, consequently the date of receipt of certified copy of the order should be considered as 27.8.2015. But to the surprise of the petitioner, the 2nd respondent sent a notice dated 15.9.2015 stating that the assessment order was served upon the petitioner on 27.5.2015, since the RPAD sent on 20.3.2015 was not received by the petitioner. Since the petitioner, inspite of its best efforts, could not avail statutory remedy of appeal available under law, the present writ petition has been filed.

4. Learned counsel for the petitioner submitted that the registered post claimed to be sent by the 2nd respondent has never been received by the petitioner and hence the action of the 2nd respondent issuing notice dated 15.9.2015 stating that the assessment order was served upon the petitioner on 27.5.2015, since RPAD sent on 20.3.2015 was not received by the petitioner is not correct. He further submitted that the petitioner has strong grounds on merits to set aside the order dated 12.3.2015 before the Appellate Authority, however, due to the conduct of the 2nd respondent, the petitioner is unable to avail the statutory legal remedies.

5. The learned Additional Government Pleader, on the other hand, put forth his arguments stating that the assessment order was served to the authorised person of the dealer on 27.5.2015 itself and hence the question of issue of certified copy of order will not arise. Therefore, the 1st respondent has rightly returned the appeal filed by the petitioner and prayed for dismissal of this petition.

6. Heard the learned counsel for petitioner and the learned Additional Government Pleader appearing for the respondents and perused the relevant records.

7. Upon verification, it is found that the RPAD was not served on the petitioner and the certified copy of the assessment order was served on the petitioner only on 27.8.2015, which date shall be taken into consideration for fixing the period of limitation for filing appeal before the Appellate Authority. When such is the date to calculate the period of limitation to file appeal, this Court is of the view that the petitioner is will within the time of filing the appeal.

8. In view of the above, the Appellate Authority is directed to entertain the appeal filed by the petitioner along with certified copy issued to the petitioner dated 27.8.2015, if it is, otherwise, in order and thereafter pass necessary orders on merits and in accordance with law after affording due opportunity to the petitioner.

9. With the above direction, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

msr
To

1. The Appellate Deputy Commissioner
of Commercial Taxes,
Chennai (East),
Greams Road,
Chennai 600 006

2. The Commercial Tax Officer,
Kotturpuram Assessment Circle,
46, Greenways Road,
R.A.Puram,
Chennai 600 028.

+1cc to Mr.Sandeep Bagmar, Advocate, S.R.No.1116
+1cc to the Government Pleader, S.R.No.1361

EV(CO)
EU(08/02/2016)

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