IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.7989 of 2015 &

M.P.Nos.1,2 and 3 of 2015

M/s. St.John Freight Systems Ltd.,
C-98, SIPCOT Industrial Complex,
Harbour Express Road,
Tuticorin-628 008.
Rep. by its Managing Director,
Shri T.Johnson .. Petitioner

Versus

The Principal Commissioner of Income-Tax,
Central-2,
No.46 M.G. Road,
Chennai -600 034. .. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for records of Respondent in C.No.2802/C-2/2014-15/3, dated 13.03.2015 and quash the same and consequently direct the Respondent to grant stay of collection of demand for the assessment years 2012-13 till the disposal of the Petition u/s.119(2)(b)/(c), dated 10.03.2015 by the CBDT.

For Petitioner : Mr.P.H.Aravind Pandian, Senior Counsel
For Mr.S.Subbarayaaiyar Padmanabhan

For Respondent : Mr.T.Pramodkumar Chopda
SSCIT

O R D E R

Heard Mr.P.H.Aravind Pandian, learned Senior Counsel appearing for the petitioner and Mr.T.Pramodkumar Chopda, learned SSCIT appearing for the respondent.

2. Challenging the order dated 13.03.2015 passed by the first respondent, which is an order on a stay petition filed by

the petitioner pertaining to the Assessments for the years 2011-12 and 2012-13, earlier, in respect of the Assessment for the year 2011-12, the matter was before the Income Tax Appellate Tribunal in I.T.A.No.1124/Mds/2015 and the Tribunal has passed an order on 17.03.2016 and the operative portion of which reads as follows:

> "7. We heard the rival submissions and perused the material on record, judicial decisions cited. The Id. Authorised Representative argued that the return of income could not filed within due date and filed detailed submissions in assessment and appellate proceedings relying on the decisions of Co-ordinate Bench of the Tribunal. But the Id. Commissioner of Income Tax (Appeals) considered the decision of Special Bench in the case Saffire Garments (supra) and over ruled the assessee's objections and observed filing return of income u/s.139(1) of the Act is mandatory. The Id. Authorised Representative drew attention to the decision of Hyderabad Bench, Tribunal in the case of S.Venkataiah (supra) were delay in filing return of income was condoned due to technicalities. Subsequently, on appeal by Revenue u/s.260A of the Act the Hon'ble Andhra Pradesh High Court has confirmed the order of the Tribunal in I.T.T.A No.114 of 2013, dated 26.06.2013. The Andhra Pradesh High Court considered the technicalities and circumstances were the assessee could not file the return. The Assessee company has made an application on 03.07.2014 with CBDT u/s.119(2)(b) of the Act for condonation of delay in filing return of income. The assessee demonstrated the submissions made before the CBDT. Considering the factual aspects, evidence, provisions of law and decisions of High Court and Tribunal relied by the assessee, we are inclined to remit the issue in dispute to the file of Assessing Officer as the application u/sec. 119(2)(b) of the Act is pending with the CBDT. The Assessing Officer has to pass the order based on the directions from CBDT after providing adequate opportunity of being heard to the assessee. This ground of the appeal is partly allowed for statistical purpose."

It is further submitted by the learned Senior Counsel for the petitioner that for the year 2011-12, pursuant to the direction issued by this Court on 20.03.2015, a sum of Rs.25,00,000/- has been paid by the petitioner.

3. The learned Senior Counsel appearing for the petitioner would further submit that the issue involved in both the Assessments being identical, they are entitled to rely upon the decision of Income Tax Appellate Tribunal on the said issue,

a direction contained therein. Therefore, prayer is made to pass similar orders in this Writ Petition also.

4. In my view, such exercise need not be done by this Court, as the first respondent would be the appropriate authority to take note of the facts and pass orders accordingly. Considering the submission that identical issue was considered by the Tribunal and the Tribunal thought fit to issue the above direction, this Court is of the view that the first respondent should consider the petitioner's petition dated 09.03.2015 for the Assessment year 2012-13 as well.

5. Accordingly, the Writ Petition is partly allowed and the impugned order in so far as rejecting the petitioner's stay petition for the Assessment year 2012-13, is being set-aside and the petition dated 09.03.2015 filed by the petitioner before the first respondent on 10.03.2015 stands restored and the first respondent is directed to take fresh decision in the matter, taking note of the direction issued by the Income Tax Appellate Tribunal in the above referred order for the Assessment year 2011-12. The first respondent shall take a decision as expeditiously as possible, preferably, within a period of six weeks from the date of receipt of a copy of this order, after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

r n s

To
The Principal Commissioner of Income-Tax,
Central-2,
No.46 M.G. Road,
Chennai -600 034.

+1 CC to Mr. Subbaraya Aiyar, Advocate SR. No. 47034
+1 CC to Mr. T. Praodkumar Chopda, Advocate, SR. No. 47173

W.P.No.7989 of 2015 &
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EV (CO)
MD : 07.09.2016