In the High Court of Judicature at Madras

Dated : 20.10.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.36779 of 2016 &
WMP.Nos.31622 to 31624 of 2016

M/s.Aurofood Products (P) Ltd.,
rep.by its Managing Director
Bipin M.Patel ...Petitioner

Vs

1.The Commercial Tax Officer (Main),
Tindivanam, Villupuram District.

2.The Appellate Deputy Commissioner
(CT), Cuddalore, Cuddalore District.

3.The South Indian Bank Limited,
Triplicane Branch, Chennai-5, rep.by
its Branch Manager ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the second respondent in his impugned proceedings made in AP.No.97/2016 CST dated 16.6.2016 and quash the same.

For Petitioner : Mrs.R.Hemalatha
For Respondents 1 & 2 : Mr.K.Venkatesh, GA

ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for respondents 1 and 2. Heard both. In view of the limited nature of relief this

Court intends to grant, the writ petition itself is taken up for final disposal without ordering notice to the third respondent.

2. The petitioner is a manufacturer and dealer of wheat products, pasta, macaroni and biscuits and registered on the file of the first respondent under the provisions of the Central Sales Tax Act, 1956. In this writ petition, the petitioner has challenged the order dated 16.6.2016 passed by the Deputy Commissioner (CT), Cuddalore, who is the Appellate Authority. By the said order, the appeal petition filed by the petitioner against the order of assessment dated 29.1.2016 under the provisions of the Central Act for the year 2011-12 has been returned as not maintainable, since the petitioner, if aggrieved, should have filed an appeal before the Highest Appellate Authority of the State in terms of Section 18(A)(1) of the Central Act and the said Authority being the Tamilnadu Sales Tax Appellate Tribunal.

3. Thus, the petitioner filed an appeal before the wrong forum and the appeal has been rightly held to be not maintainable.

4. However, the learned counsel for the petitioner would submit that on account of the petitioner bona fidely prosecuting the matter before the wrong forum, now they are precluded from approaching the Tribunal, since the period of limitation is over.

5. Admittedly, the petitioner had preferred an appeal before the Deputy Commissioner (CT) well within the period of limitation of 60 days. Therefore, this Court is of the view that time should be granted to the petitioner to pursue their appeal remedy before the Tamilnadu Sales Tax

Appellate Tribunal.

6. Accordingly, the writ petition stands disposed of by granting liberty to the petitioner to file an appeal before the Tamilnadu Sales Tax Appellate Tribunal, Chennai as against the order of assessment dated 29.1.2016 under the Central Act for the year 2011-12 and if such an appeal is filed within 30 days from the date receipt of the copy of this order, the Tribunal shall entertain the appeal petition and not reject the same on the ground of limitation. Thereafter, it is open to the petitioner to move appropriate application for interim relief before the Tribunal. It is needless to state that at the time of filing the appeal, the petitioner shall comply with the condition of pre-deposit. No costs. Consequently, the above WMPs are closed.

20.10.2016

Internet : Yes

To
1.The Commercial Tax Officer (Main), Tindivanam, Villupuram District.
2.The Appellate Deputy Commissioner (CT), Cuddalore, Cuddalore District.
3.The Branch Manager, South Indian Bank Limited, Triplicane Branch, Chennai-5.

RS

T.S.SIVAGNANAM,J

RS

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