IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.35196 to 35199 of 2016
and
W.M.P.Nos.30308 to 30311 of 2016

Southern Petrochemical Industries
Corporation Limited
(Represented by its Deputy Manager (Finance))
S.Saravanan,
No.88, SPIC House, Mount Road,
Guindy, Chennai - 600 032. ...Petitioner in all W.Ps

vs.

1. The Assistant Commissioner (CT) (FAC)
Allandur Assessment Circle,
12, Vedagiri Street,
Alandur, Chennai-600 016.

2. The Appellate Deputy Commissioner (CT)
Chennai (East) Division,
C.T.Building Annexe, Third Floor,
Greams Road,
Chennai-600 006. ...Respondents in all W.Ps

Petitions filed under Article 226 of The Constitution of India praying to issue a writ of Certiorari, calling for the records on the files of the First Respondent herein in CST/731184/2007-08, 2008-09, 2009-10, 2010-2011 dated 29.01.2016 and quash the same.

For Petitioner in all W.Ps : Mr.N.Prasad

For Respondents in all W.Ps : Mr.K.Venkatesh
Government Advocate

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COMMON ORDER

Heard Mr.N.Prasad, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents who is assisted by Mrs.A.Jeyashanthi, Assistant Commissioner (CT), Alandur Assessment Circle. By consent, the writ petitions are taken up for final disposal.

2.In these writ petitions, the petitioner has challenged the assessment orders passed under the Central Sales Tax Act, 1956 (CST), for the years 2007-2008 to 2010-2011 as against the assessment orders, the petitioner had filed appeals before the second respondent. However, the appeal petitions were not filed within the period of limitation or within the extended period as there was a delay of about 18 days in filing the appeal as well as effecting pre-deposit of 25% of the disputed tax. As a consequence, the Appellate Authority having not been conferred with power to condone the delay beyond the period of 60 days returned the appeals as not maintainable. The stand taken by the second respondent in its order dated 22.07.2016 cannot be faulted. However, the petitioner's case is that the company is under a path of recovery and production has been started recently and the reason for passing the impugned assessment orders under the Central Sales Tax Act, 1956 (CST) is attributable solely to the delay in receipt of the C Forms.

3.Therefore, the learned Counsel for the petitioner would submit that if an opportunity is granted to the petitioner to pursue the appeal remedy, they would be able to convince the Appellate Authority that the proposals as confirmed in the assessment orders under the Central Sales Tax Act 1956 (CSTA) are not justified and tenable.

4.Under normal circumstances, this Court will not exercise the jurisdiction to condone the delay in filing the appeal as it has been held that when the statute prescribes outer time limit for the authority to exercise its jurisdiction and condone the delay, the Writ Court exercising the jurisdiction under Article 226 of the Constitution of India would be denude of power to condone the delay. However, in certain cases, there has been a slight departure from this rule considering the peculiar facts and circumstances and making it clear that it should not be taken as a precedent either by the dealer concerned or by any other dealers.

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5.Considering the peculiar facts of the case and noting that the petitioner Company is in a path of revival and commenced production recently, this Court is convinced that this is one of the cases where this Court would be justified in exercising the discretion and condoning the delay, more so when the delay is less than 20 days. There is nothing on record to show that the appeals have been deliberately lodged belatedly. In such circumstances, instead of setting aside the impugned assessment orders under the Central Sales Tax Act, 1956 (CST), this Court exercises its discretion and condones the delay in filing the appeal before the second respondent for all the four assessment years with a direction to accept the payment of 25% as pre-deposit which has already been made and in addition to that, the petitioner is directed to pay further 15% of the disputed tax within a period of two weeks from the date of receipt of copy of this order, and if the same is done, the assessment orders under the Central Sales Tax Act, 1956 (CST), for the years 2007-2008 to 2010-2011 shall remain stayed till the appeals are heard and disposed of by the second respondent/ Appellate Authority. On payment of 15% of disputed tax as ordered supra, the attachment on the petitioner's Bank account/s shall be lifted. But till the payment is effected, the attachment will continue, but the Assessing Officer shall not recover any money from the petitioner's bank account. The petitioner is granted 10 days time from the expiry of the two weeks period to re-present the appeal before the second respondent which shall be heard and decided on merits and in accordance with law. This order shall not be treated as a precedent.

6.The Writ Petitions are disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

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   Chennai-600 016.

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   Chennai (East) Division,
   C.T.Building Annexe, Third Floor,
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   Chennai-600 006.

1 CC to Mr. N.Inbarajan, Advocate, SR. 57769

W.P.Nos.35196 to 35199 of 2016

GR (CO)
PSI 06/10/2016

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