IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition No.37093 & 37094 of 2016

Tvl. Times Internet Limited,
Plot No.391, Udyog Vihar,
Phase - III, Gurgaon,
Haryana - 122 016,
Rep. By its Assistant Vice
President (Finance) ..Petitioner in both W.Ps.

Versus

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 in both W.Ps.

Prayer:- Petitions filed under Article 226 of the Constitution of India, seeking for the issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent, quash the same bearing Rc Nos..510/2016/A and 511/2016/A, dated 01.08.2016, for the year 2011-12 and 2012-13, issued by the first respondent and direct the first respondent to accept and admit the appeal filed by the petitioner.

For Petitioner in both W.Ps. : Mr. R.Sandeep Bagmar
For Respondents in both W.Ps.: Mr. K.Venkatesh,
Govt. Advocate

C O M M O N O R D E R

Heard Mr.R.Sandeep Bagmar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate, who accepts notice on behalf of the respondents, in both the writ petitions. By consent of the learned counsel for both sides, the writ petitions are taken up for final disposal.

2. The petitioner is a Public Limited Company, incorporated under the Indian Companies Act, 1956, engaged in the business transactions through their on-line website. The

petitioner is a registered dealer on the file of the second respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, and the Central Sales Tax Act, 1956, for the assessment years 2011-12 and 2012-13 and orders were passed by the second respondent, (both) dated 30.09.2015, revising the taxable turnover and raising a demand of Rs.50,06,988/- and revised the input tax credit of Rs.50,02,781/-, apart from levying penalty of Rs.32,10,909/-. The petitioner filed an appeal before the first respondent on 12.11.2015 along with the pre-deposit of 25%, as per the demand notice in Form - O. The appeal presented was well within the period of limitation of 30 days. On 25.01.2016, the first respondent / the Appellate Authority, returned the appeal petition on the ground that there is a shortfall in pre-deposit. The original of such order was handed over to the petitioner during May 2016. The first respondent arrived at the shortfall of Rs.47,65,360/- in the payment of pre-deposit and granted 10 days time to pay the same. The petitioner initially was not aware as to how the shortfall was arrived at and on meeting the first respondent, in person, they were informed that incorrect amount has been mentioned in Form - O and therefore, there is a shortfall in the payment of pre-deposit. The first respondent informed the petitioner that the pre-deposit paid by them is only towards the tax demand on the total taxable turnover, as per the assessment order and no pre-deposit has been paid in respect of the reversal of input tax credit of Rs.50,06,988/-. Pursuant to which, the petitioner approached their Assessing Officer, namely, the second respondent, for issuing the rectified Form - O. Ultimately, the second respondent issued a revised Form - O dated 03.06.2016, which was received by the petitioner on 16.06.2016. Thereafter, the authorized representative of the petitioner appeared before the first respondent on 30.06.2016 and informed that the balance pre-deposit is to be paid along with the revised Form - X and on 12.07.2016, the petitioner filed revised Form - X, along with the requisite pre-deposit of Rs.12,50,695/- in respect of the reversal of input tax credit. However, the first respondent, by the impugned orders, returned the appeal petitions as not maintainable, because the balance of 25% of the disputed tax of Rs.12,50,695/- was paid after the lapse of 60 days, i.e., beyond the condonable period and therefore, the appeals are not maintainable.

3. However, one important factor which has to be taken into consideration is that, there was an error in the first Form - O, dated 30.09.2015, issued to the petitioner, which was received by them on 14.10.2015. It is not in dispute that the petitioner had paid 25% of the disputed amount in terms of the said Form - O, dated 30.09.2015. It is only, thereafter, the mistake was found and the revised Form - O came to be issued and received by the petitioner in May 2016 and on receipt of the revised Form - O, the petitioner has remitted 25% of the disputed tax. Therefore, this Court is of the view that, for all practical purposes, the initial date of filing

of the appeal, i.e., on 12.11.2015, along with the pre-deposit, shall be reckoned, to compute the period of limitation and the delay in remittance of the subsequent amount, as pre-deposit, is not solely attributable to the petitioner. Therefore, this Court is inclined to direct the first respondent to take the appeal on file by reckoning the pre-deposits effected by the petitioner, as valid and proper.

4. In the light of the above, the writ petitions are allowed, the impugned orders are set-aside and the petitioner is directed to re-present the appeals and the first respondent is directed to take the appeals on file and decide the matters on merits and in accordance with law. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

srk

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.60728 & 60729

KGK(CO)
EU(22/11/2016)