In the High Court of Judicature at Madras

Dated : 25.10.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.37289 & 37290 of 2016
& WMP.Nos.31984 & 31985 of 2016

Tvl.Sri Ranga Distributors, rep.by
its Proprietor Mr.B.Ranganathan ...Petitioner in both the WPs

Vs

1.The Commercial Tax Officer (FAC),
Tirukoilur Assessment Circle,
Tirukoilur.

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

3.The Sales Tax Appellate Tribunal,
Chennai Main Bench,
City Civil Court,
High Court Campus, Chennai-104...Respondents in both the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the first respondent in TIN No.33724761183/2008-09 and TIN No.33724761183/ 2009-10 dated 29.9.2016 and quash the same.

For Petitioner : Mr.A.N.R.Jayapratap
For Respondents 1 & 2 : Mr.S.Kanmani Annamalai, AGP

COMMON ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for respondents 1 and 2. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is a registered dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. The petitioner has filed these two writ petitions challenging the notices issued by the first respondent dated 29.9.2016 demanding penalty in respect of the assessments for the years 2008-09 and 2009-10.

3. The undisputed facts are that as against the orders of assessment dated 6.5.2015 for both the years, the petitioner

preferred appeals before the second respondent - the Appellate Deputy Commissioner (CT), Cuddalore in A.P.Nos.147 and 148/2015 - VAT. The said appeals were disposed of by orders dated 3.2.2016. While doing so, the second respondent remitted the matters to the Assessing Officer to levy penalty under Section 22(5) of the said Act.

4. As against such orders, both on merits as well as against the portion directing the Assessing Officer to levy penalty, the petitioner filed two appeals before the third respondent - Tribunal on 7.6.2016. As there is a delay in filing the appeals before the Tribunal, the petitioner filed TMP.Nos. 107 and 115/2016 (MB) respectively for the years 2009-10 and 2008-09, to condone the delay of 26 days in filing the appeals. The said miscellaneous petitions were taken on file by the Tribunal and they are now pending consideration before the Tribunal. The reason for the pendency of the miscellaneous petitions is that there is no quorum in the Tribunal and that the Presiding Officer, who was manning the Tribunal, is since retired. In this situation, the petitioner is faced with the demand notices by the first respondent directing them to pay penalty.

5. In the impugned proceedings, the only reason given is that the second respondent directed the Assessing Officer to levy penalty and nothing more. Since the orders passed by the second respondent are the subject matters of appeal and the petitioner questioned the orders in entirety, it will be appropriate for the first respondent to defer all the proceedings till the appeals are heard and disposed of. This is more so, because there is no quorum in the Tribunal. For no fault on the part of the petitioner, the delay condonation petitions are not taken up by the Tribunal for hearing.

6. Therefore, till the delay condonation petitions are heard and decided by the Tribunal, the first respondent shall not initiate any further proceedings and the impugned proceedings shall be kept in abeyance. In the event of the Tribunal condoning the delay and directing the appeals to be taken on file, liberty is granted to the petitioner to move appropriate petitions for stay before the Tribunal.

7. With the above directions, the writ petitions are disposed of. No costs. Consequently, the above WMPs are closed.

Sd/-
Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

To

1.The Commercial Tax Officer (FAC), Tirukoilur Assessment Circle,
Tirukoilur.

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

3.The Sales Tax Appellate Tribunal,
Chennai Main Bench,
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