IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.11.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.No.38402 of 2016

Exfile Infotech Private Limited
Rep. By its Managing Director
Mohamed Mohideen ...Petitioner

Vs.

1.The Assistant Commissioner (CT)
Chepauk Assessment Circle
PAPJM Building
No.1, Greams Road, 1st floor
Chennai 600 006.

2.The Appellate Deputy Commissioner (CT)
Chennai (East), Chennai 600 006.
... Respondents

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Mandamus to direct the second respondent to take on record and entertain the appeal on filing against the order of the first respondent in TIN 33610662848/2013-14 dated 05.05.2016 as per section 51 of TNVAT Act without rejecting on the ground of limitation.

For Petitioner :Mr.K.Shankar

For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.K.Shankar, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents. With the consent of the learned counsel appearing on either side, the Writ Petition itself is taken up for final disposal.

2.The petitioner, who is a registered dealer on the file of the first respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006, [TNVAT Act], has filed this Writ Petition, represented by its Managing Director to direct the respondents to take on record and entertain the appeal filed by them against the order of assessment passed by the first respondent dated 05.05.2016, under the TNVAT Act, for the assessment year 2013-14.

3.The petitioner-Company has been served with the original order of assessment on 05.05.2016 and the petitioner should have filed the Appeal within a period of thirty days from the said date, with another thirty days, along with an Application for condonation of delay. Therefore, the petitioner could have presented the Appeal on or before 14.08.2016, along with the mandatory pre-deposit by effecting payment of 25% of the disputed tax.

4.The petitioner did not do so and the reason being that his father was suffering from blood cancer and had taken seriously ill and on account of which the petitioner had to attend to his father and did not realise the effect of the order of assessment and only when the petitioner’s Bank Account was attached for recovery of the tax and penalty, the petitioner had taken action.

5.In the affidavit filed in support of the Writ Petition, the petitioner would contend that they approached the second respondent for filing the Appeal, but the second respondent failed to entertain the Appeal Petition.

6.For the Appeal to be entertained by the Appellate Authority, the mandatory pre-deposit of payment of 25% of the disputed tax has to be made. There is nothing to show that the petitioner has effected 25% payment. However, this Court is of the view that the petitioner should not be left without any remedy especially when he has been put to difficult circumstances on account of certain personal problem. Therefore, the following order will meet the ends of justice:

> "The petitioner is directed to pay 50% of the disputed tax, within a period of four weeks from the date of receipt of a copy of this order. If such payment is made, then the petitioner is entitled file an Appeal before the second respondent, within a period of two weeks there from. If such Appeal is filed, the second respondent shall entertain the Appeal, without rejecting the same on the ground of limitation and taking into consideration the payment of 50% of the disputed tax, shall not call upon the petitioner to pay any further amount, but, direct the petitioner to give a bond for the remaining disputed tax and penalty. After execution of the bond, the Appeal shall be heard and disposed of on merits. If the petitioner complies with the above direction in paying the 50% of the disputed

tax, then the attachment of the petitioner's Bank Account shall be lifted. "

The Writ Petition is disposed of accordingly. No costs.

Sd/-
Asst.Registrar (CS VI )

/true copy/

Sub Asst. Registrar

Rpa

To

1.The Assistant Commissioner (CT)
Chepauk Assessment Circle
PAPJM Building, No.1, Greams Road, 1st floor
Chennai 600 006.

2.The Appellate Deputy Commissioner (CT)
Chennai (East), Chennai 600 006.

1 cc to Mr.K. Shankar, Advocate, Sr. 63137
1 cc to Government Pleader, Sr. 63120

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