IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2016

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

W.P.No.6454 of 2016
and
WMP No.5737 of 2016

Vadivukarasi .... Petitioner

Vs.

1. The Presiding Officer-cum-
Principal District Judge,
Puducherry Value Added Tax Appelalte Tribunal,
Integrated Court Complex,
Puducherry

2. The Appellate Assistant Commissioner,
Commercial Taxes Department,
Puducherry .... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in the return slips Nos.Nil dated 27.10.2015 and 27.11.2015 docket order in the Memorandum of Appeal dated 16.10.2015 and quash the same and to direct the first respondent to receive and admit the Tax Appeal filed which was returned by the first respondent on 16.10.2015.

(PRAYER AMENDED AS PER ORDER OF THIS COURT DT.9.3.16 BY MDJ IN WMP.7903/16)

For petitioner : Mr.P. Suresh

For respondents : Mr.A. Tamilvanan
Government Advocate (Pondy,)

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in the return slips Nos.Nil dated 27.10.2015 and 27.11.2015 docket order in the Memorandum of Appeal dated 16.10.2015 and quash the same and to direct the first respondent to receive and admit the Tax Appeal filed which was returned by the first respondent on 16.10.2015.

2. Heard both sides.

3. According to the petitioner, the Government of Puducherry had in exercise of the powers, conferred by Sec.31 of the Puducherry Value Added Tax Act, 2007, reduced the rate of tax, payable on the sale of Liquefied Petroleum Gas @ 1% with effect from 1.7.2007 vide Notification issued in G.O.Ms.No.27/F2/2007 dated 1.7.2007 of the Finance Department, Puducherry. The petitioner had been doing business on the basis of the above said Government Order and the petitioner had charged and collected VAT @ 1% for re-sale of Liquefied Petroleum Gas in Puducherry from the customers for the Assessment Year 2012-2013. The Assessing Officer has passed the order dated 26.12.2014 and levied the rate of tax at 1% and 14.5% for the Asssessment Year 2012-2013. Against which, the petitioner preferred an appeal before the Appellate Assistant Commissioner (CT), Puducherry, by paying 12.5% of the disputed tax. The Appeallate Assistant Commissioner has dismissed the appeal.

4. Against the order of the Appellate Assistant Commissioner, the petitioner preferred a tax appeal before the Sales Tax Appellate Tribunal, Puducherry. For filing an appeal, as against the order passed by the Appellate Assistant Commisisoner, the petitioner is liable to pay 25% of the disputed tax as pre-condition. In the case on hand, 12.5% of the disputed tax was already paid by the petitioner when the appeal was filed before the Appellate Assistant Commissioner and the balance 12.5% of the disputed tax has to be remitted for admission of the tax appeal before the Sales Tax Appellate Tribunal.

5. It is not in dispute that the appeal, preferred by the petitioner for the Assessment Year 2011-12, was allowed by the appellate authority and therefore, the pre-deposit, made by the petitioner to the tune of Rs.1,24,553/- can be withdrawn by the petitioner.

6. As against the order passed by the appeallate authority for the Assessment Year 2011-2012, the respondent had filed an appeal, but, when there is no provision under the Act for withholding the pre-depsoit amount, the petitioner can withdraw the same and utilise the said amount for making pre-depsit before the Sales Tax Appellate Tribunal, Puducherry in respect of Assessment Year 2012-2013. Even in the petitioner's letter dated 5.10.2015, in paragraph-2, they have only requested the Deputy Commercial Tax Officer to give credit to the payment of 12.5% of the disputed tax paid for the Assessment Year 2011-2012

for the purpose of filing an appeal before the Sales Tax Appellate Tribunal for the Assessment Year 2012-13.

7. As already stated, when the appeal filed by the petitioner in respect of Assessment Year 2011-12 was allowed by the appellate authority, the petitioner can withdraw the amount, deposited in the said appeal, and pay the same for filing an appeal before the Sales Tax Appellate Tribunal, Puducherry in respect of Assessment Year 2012-13. The petitioner is directed to file an application before the second respondent for withdrawing the sum of Rs.1,24,553/-(Rupees one lakh twenty four thousand five hundred fifty three only) and the second respondent is directed to consider the same and permit the petitioner to withdraw the amount, enabling him to file an appeal before the Sales Tax Appellate Tribunal, Puducherry. With the above observation, the writ petition is disposed of. No costs. Consequently, connected MP is closed.

sr

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Presiding Officer-cum-
Principal District Judge,
Puducherry Value Added Tax Appelalte Tribunal,
Integrated Court Complex,
Puducherry

2. The Appellate Assistant Commissioner,
Commercial Taxes Department,
Puducherry.

+ 1 CC TO MR.P.SURESH, ADVOCATE SR 16538

+ 1 CC TO THE GOVT.PLEADER FOR PUDUCHERRY HIGH COURT, MDS.
SR 15955

KR/16/3/16

W.P.No.6454 of 2016