BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.12630 of 2016

R.Pankiraj .. Petitioner

Vs.

1.The Appellate Deputy Commissioner (CT) (FAC),
1st Floor, Commercial Taxes Buildings,
Reserve Line Road,
Tirunelveli.

2.The Commercial Tax Officer,
Thuckalay. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, to call for the records in Na.Ka.No.A1/84/16 dated 29.04.2016 on the file of the 1st respondent and quash the same as illegal, arbitrary and against law, and direct the 1st respondent herein namely, the Appellate Deputy Commissioner (CT)(FAC), Tirunelveli to entertain the appeal and decide the same on merits.

For Petitioner : Mr.S.Karunakar

For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

O R D E R

It is the case of the petitioner that an order of Final Assessment, dated 08.12.2015, was passed against him by the Commercial Tax Officer, Tuckalay, however, the same was received by the petitioner only on 09.01.2016, whereupon, he filed an appeal before the second respondent/Commercial Tax Officer, Tuckalay, on 29.01.2016, that is, well before the last date for filing appeal on 08.02.2016. The petitioner, who was suffering from illness, entrusted the matter to his Accountant. The appeal papers were returned for non-payment of 25% of the disputed tax amount and the said fact was not brought to the notice of the petitioner, who was not well then. However, after sometime, the petitioner paid 25% of the disputed tax on 18.04.2016 and a representation was also sent to the first respondent on 20.04.2016. While so, the first respondent returned the Appeal Papers, by the impugned proceedings, dated 29.04.2016, on the ground that 25% of the disputed tax amount was paid only on the 79th day from the date of receipt of the assessment order as it is beyond the appeal period. According to the petitioner, for the mistake of the Accountant, who was entrusted with the matter, the petitioner cannot be held responsible. In other words, the delay in payment of 25% of the disputed amount before filing the appeal is neither wilful nor wanton. Therefore, a suitable direction may be issued to the first respondent by setting aside the impugned order, dated 29.04.2016, he pleaded.

2.Mr.R.Karthikeyan, learned Additional Government Pleader takes notice for the respondents.

3. According to the petitioner, due to illness, he was not able to follow up the matter and the fact that his Accountant had filed the appeal without making 25% of the tax amount was brought to his notice only after the first respondent returned the appeal papers by the impugned proceedings dated 29.04.2016, stating that 25% of the tax amount was paid only on the 79th day from the date of receipt of a copy of the assessment order, as mentioned above. This Court also could see that the appeal has been filed before the last date i.e., on 08.02.2016, of course, without making deposit of 25% of the disputed tax as legally required, however, subsequently, the same has also been deposited.

4. In view of the above, this Court, while condoning the lapse, directs the petitioner to pay Rs.5,000/- (Rupees five thousand only) to the Mediation and Conciliation Centre attached to the Madurai Bench of Madras High Court, and to re-present the Appeal within one week from the date of receipt of a copy of this order, whereupon, the first respondent shall consider the appeal on merits and pass appropriate orders on merits and in accordance with law.

6. Accordingly, this writ petition is disposed of. No Costs.

Sd/-
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To

1.The Appellate Deputy Commissioner (CT) (FAC),
1st Floor,
Commercial Taxes Buildings,
Reserve Line Road,
Tirunelveli.

2.The Commercial Tax Officer,
Thuckalay.

Copy To: The Co-ordinator,
Mediation and Conciliation Centre,
Madurai Bench of Madras High Court, Madurai.

+1 cc to M/S.S.Karunakar , Advocate in SR.No. 37632
+1 cc to The Special Government Pleader in SR.No. 37921

PJL
CSL/PV/12.09.2016: 3P/6C

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