IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.9524 of 2017 &
W.M.P.Nos.10453 & 10454 of 2017

M/s.Susee Corporation,
Rep. By its Partner, S.Sargunam,
No.1, Vallal Pachaiyappan Street,
Kancheepuram,
Kancheepuram District. ... Petitioner

Vs.

1.Assistant Commissioner (CT),
Kancheepuram Assessment Circle,
Kancheepuram - 631 502,
Kancheepuram District.

2.Appellate Deputy Commissioner (CT),
Chennai (Sourth), 3rd Floor,
PAPJAM Building Annexe,
No.1, Greams Road,
Chennai - 600 006. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records on the file of the second respondent in its impugned proceedings made in AP.No.90/2015/VAT-2009-10 dated 14.11.2016 quash the same and further direct the second respondent to pass order afresh after giving an opportunity of being heard.

For Petitioner : Mrs.R.Hemalatha

For Respondent : Mr.K.Venkatesh,
Government Advocate.

O R D E R

Heard Mrs.R.Hemalatha, learned counsel for the petitioner and Mr.K.Venktesh, learned Government Advocate for the respondents. With the consent on either side the writ petition itself is taken up for final disposal.

2.The petitioner is aggrieved by the order passed by the Appellate Deputy Commissioner (CT), Chennai (South), the second respondent, dated 14.11.2016, dismissing the appeal filed by the petitioner, as the petitioner did not appear for the hearing. In paragraph No.3 of the impugned order, it is stated that for more than 15 hearings, the appeal was posted and there was no appearance on behalf of the petitioner and therefore, the appeal was dismissed.

3.Learned counsel for the petitioner would submit that though it may be true that 15 dates were given for the appeal that by itself does not establish that the appeals were ripe for hearing and it is a formal procedure followed by all the Appellate Authorities by assigning dates and final date will be intimated and only on that day, the appeal will be heard.

4.However, I am unable to fully accept such submissions, as there is nothing on record to substantiate the statement made by the petitioner that the dates which have been assigned by the Appellate Authority are in effect artificial dates or dates where no effective hearing would be done. The statutory presumption is that when the case is listed by the Appellate Authority on a particular date, it will be heard, if it is to be adjourned for some reasons, the reason will be recorded in the appeal filed.

5. Be that as it may, I find from the records that the petitioner, apart from paying the tax for the relevant years has also paid excess amount of Rs.59,395/-, as could be seen from the order of assessment dated 18.02.2015. Therefore, this Court is of the view that one more opportunity can be granted to the petitioner to appear before the Appellate Authority and argue the matter and if they failed to do so, then no further liberty can be granted and the Appellate Authority can dismiss the appeal.

6.With the above observations, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the second respondent with the direction to fix the hearing of the appeal on 01.08.2017 and on that date, the petitioner should appear and after hearing the parties, the Appellate Authority is directed to pass appropriate orders on merits and in accordance with law. No cost. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

abr/pbn

To

1.Assistant Commissioner (CT),
Kancheepuram Assessment Circle,
Kancheepuram - 631 502,
Kancheepuram District.

2.Appellate Deputy Commissioner (CT),
Chennai (Sourth), 3rd Floor,
PAPJAM Building Annexe,
No.1, Greams Road, Chennai - 600 006.

+1cc to Mrs.R.Hemalatha, Advocate Sr.49195
+1cc to the Government Pleader Sr.49438

W.P.No.9524 of 2017

srg 20/07/2017