IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.9896 of 2017
and
WMP No.10898 of 2017

M/s.Sri Balambiga Traders
Rep by its Proprietor Mr.V.Balachandar
No.1/C, National Talkies Complex,
Bye-Pass Road, Vellore. ... Petitioner

Vs.

1. The Commercial Tax Officer
   No.55, Bharathiar Salai, CT Buildings,
   Vellore (North), Vellore.

2. The Appellate Deputy Commissioner (Appeals)
   No.4, Fort Round Road,
   Vellore- 632 001. ... Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in TIN 33934200941/2015-16 dated 30.09.2016 along with the consequential order of rectification in TIN No.33934200941/2015-16 dated 28.11.2016 quash the same and further direct the first respondent to pass fresh orders in accordance with the provisions of the Tamil Nadu Value Added Tax Act, 2006 without being influenced by the unauthorized VAT Audit report in VSI-3-No.295/2015-16 dated 08.12.2015 after giving an opportunity of being heard as mandated under Sec.22(4) of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

The petitioner is aggrieved against the order passed by the first respondent dated 30.09.2016 and 28.11.2016, which are nothing but the order of assessment and the order passed on the verification application. Consequently, the petitioner also seeks for a direction to the first respondent to pass fresh orders without being influenced by the VAT Audit report dated 08.12.2015.

2. Mr.V.Sundareswaran, learned counsel for the petitioner submitted that the petitioner in fact has filed an appeal before the First Appellate Authority viz., the second respondent herein and the appeal was returned on 06.02.2017 on the reason that the petitioner has paid 25% of the tax liability belatedly, that is after 73 days.

3. The learned Government Advocate submitted that since the petitioner has approached the Appellate Authority and filed the appeal which is returned only for effecting the compliance, he may be directed to proceed with such remedy before such authority instead of entertaining the present writ petition.

4. Perusal of the return memo dated 06.02.2017 issued by the second respondent would show that the petitioner has paid the disputed amount on 01.02.2017, however with a delay of 73 days. Further perusal of the return memo would only show that the appeal filed by the petitioner was not rejected and on the other hand it was only returned for re-submission after effecting the compliance. Since the petitioner has made the payment of 25% of the tax liability and the Appellate Authority being the fact finding authority, has to consider the whole issue on mertis and in accordance with law, as this Court is not inclined to go into the factual aspects of the matter by entertaining the writ petition.

5. Accordingly, this writ petition is disposed of, by directing the second respondent to entertain the appeal and dispose of the same on merits and in accordance with law, after giving due opportunity of hearing to the petitioner. The petitioner is directed to re-present the appeal within a period of two weeks from the date of receipt of a copy of this order.

On receipt of such appeal, the second respondent shall dispose of the same, as stated supra, within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Commercial Tax Officer
   No.55, Bharathiar Salai, CT Buildings,
   Vellore (North), Vellore.

2. The Appellate Deputy Commissioner (Appeals)
   No.4, Fort Round Road,
   Vellore- 632 001.

+1cc to Mr.V.Sundareswaran, Advocate Sr.40485
+1cc to the Special Government Pleader Sr.40581

W.P.No.9896 of 2017

srg 09/06/2017