IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.12.2017

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.33349 and 33350 of 2017
and W.M.P.Nos.36793 to 36796 of 2017

M/s.G.V.Computers
Rep.by its Proprietor - V.Ethiraj
No.20/58, Polur Road
Tiruvannamalai
Tiruvannamalai District. .. Petitioner in both W.Ps.

..Vs..

1.The Assistant Commissioner(CT)
Tiruvannamalai-1, Circle,
Tiruvannamalai, Tiruvannamalai District.

2.The Appellate Deputy Commissioner (CT)
Commercial Taxes Building
Vellore, Vellore District. .. Respondents in both W.Ps.

Prayer in W.P.No.33349 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in his impugned proceedings made in M.P.No. & Year: 262/2017 (VAT) dated 17.11.2017 quash the same as illegal and contrary to the scheme of the Act and further direct the second respondent to entertain the appeal petition relating to the Assessment year 2010-2011 under TNVAT Act, 2006 and disposed of in accordance with law.

Prayer in W.P.No.33350 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in his impugned proceedings made in M.P.No. & Year: 263/2017 (VAT) dated 17.11.2017 quash the same as illegal and contrary to the scheme of the Act and further direct the second respondent to entertain the appeal petition relating to the Assessment year 2012-2013 under TNVAT Act, 2006 and disposed of in accordance with law.

For Petitioner in both W.Ps. : Mrs.R.Hemalatha

For Respondents in both W.Ps. : Mr.K.Venkatesh
Government Advocate

COMMON ORDER

Heard Mrs.R.Hemalatha, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondents. With the consent on either side, the writ petitions are taken up for disposal at this stage.

2.The petitioner is aggrieved by the impugned orders dated 17.11.2017 passed by the second respondent, the Deputy Commissioner. By the impugned order, the miscellaneous applications filed by the petitioner for condonation of delay in representing the appeal papers was rejected. Considering the fact that the petitioner had effected the payment of 25% of the disputed tax as early as on 31.12.2014 and filed the appeal in time should be reckoned in favour of the petitioner. This is so, because the appellate remedy is a valuable remedy as it is the first forum before which the petitioner can agitate the correctness of the order of assessment passed by the Assessing Officer. Such an appellate remedy should not be denied to an assessee solely on the ground of technicalities, especially when there is no malafides attributed on the assessee.

3.In the instance case, the following factors are in favour of the assessee, namely, the appeal petition was presented well within the period of limitation, the condition regarding pre-deposit of 25% of the disputed tax was made on 31.12.2014, which is also within time. The problem appears to have arisen on account of non-furnishing of breakup details for the total amount Rs.54,793/- paid by the petitioner in respect of all the four assessment years, namely, 2010-2011, 2011-2012, 2012-2013 and 2013-2014. When the papers were returned to the petitioner vide return Memo dated 19.02.2015 to provide the breakup details, the petitioner was given 10 days time to re-present the same. It is stated that the petitioner was able to secure a certificate from his Assessing Officer only on 22.09.2017, after which the appeals were re-submitted along with the delay.

4.No doubt, it is true that the delay if computed from the original date appears to be enormous. But, however, I am of the view that the delay can be computed from the date on which the certificate was issued by the Assessing Officer, i.e. 22.09.2017. If that be so, the delay is not inordinate. Thus, considering the above factors, this Court is of the view that the petitioner should be permitted to pursue their appeal remedy on merits rather than being non-suited on technical ground.

5.Thus, for the above reasons, the writ petitions are allowed, the impugned orders are set aside and the petitioner is directed to re-present the appeals along with the copy of this order before the appellate authority, who shall entertain the appeals and decide the same on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dna/cse

To

1.The Assistant Commissioner (CT)
Tiruvannamalai-1, Circle,
Tiruvannamalai,
Tiruvannamalai District.

2.The Appellate Deputy Commissioner (CT)
Commercial Taxes Building,
Vellore,
Vellore District.

+1cc to Special Government Pleader Sr.No.91770
+2cc to M/s.R.Hemalatha, Advocate SR.No.91781

KAN(CO)
sm:9.1.2018