IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2017

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.33429 & 33430 of 2017
and
W.M.P.Nos.36922 & 36923 of 2017

Sundaram Dynacast Private Limited,
Rep. By its Senior Vice President/
Authorised Signatory,
J.Ravindran, No.67, Chamiers Road,
Chennai - 600 035. ... Petitioner in both WPs

Vs.

Assistant Commissioner (CT)
Kotturpuram Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028. ... Respondent in both WPs

Prayer: Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent passed TIN 33020860810/2013-2014 and 33020860810/2014-2015 dated 30.06.2017 respectively and quash the same and further direct the respondent to re-do the assessment in accordance with the law after providing sufficient opportunity to the petitioner.

For Petitioner : Mr.N.Murali

For Respondent : Mr.K.Venkatesh
Government Advocate

COMMON ORDER

Heard Mr.N.Murali, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent. With the consent on either side, these writ petitions are taken up for final disposal.

2.The petitioner is aggrieved by an order of assessment under the provisions of the Tamil Nadu Value Added Tax Act, 2006 dated 30.06.2017 for the assessment years 2013-2014 and 2014-2015. On a perusal of the impugned order, I find that all the issues raised by the petitioner and considered by the Assessing Officer are all factual. In fact, the grounds raised by the petitioner are also factual. Therefore, to test the correctness of the impugned orders, the Court would have to necessarily delve deep into the questions of fact which is not permissible in a writ petition especially when the provisions of the Act provide hierarchy of remedies to the assessee. Therefore, this Court is inclined to relegate the petitioner to the appellate forum.

3.The learned counsel for the petitioner is not averse to the order to be passed by this Court directing the petitioner to avail the appellate remedy, but would submit that if the appeal is filed as on date, the same is liable to be rejected as being time barred as the appellate authority would not have power to condone the delay beyond the period of 60 days.

4.Considering the above facts, this Court is inclined to pass the following order, which will not only give liberty to the assessee to prefer an appeal, but, at the same time, to protect the interest of Revenue.

5.Accordingly, the Writ Petitions are disposed of, by directing the petitioner to pay 25% each of the disputed tax within 15 days from the date of receipt of a copy of the order. If such payments are effected along with the said receipt for payments, the petitioner is granted 10 days time to file appeal before the Appellate Deputy Commissioner (CT), Chennai (East), Chennai - 600 006 and if such appeal is preferred, the appellate authority shall entertain the appeal without rejecting the same on the ground of limitation. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

Sgl
To

Assistant Commissioner (CT)
Kotturpuram Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028.

+1cc to the Special Government Pleader(Taxes), S.R.No. 91912

+2cc to Mr.N.MURALI Advocate, S.R.No. 92021

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RSI(CO)
TR(29/01/2018)