IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2017

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THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.Nos.2322 and 2323 of 2017

M/s.Mohamed Hardwares & Electricals,
Rep. by its Proprietor ... Petitioner in both the W.Ps.

Vs.

1 Appellate Deputy Commissioner (CT),
Jail Road, Cuddalore,
Cuddalore District.

2 Commercial Tax Officer (Main),
Kallakurichi Assessment Circle,
Villupuram District. ... Respondents in both the W.Ps.

Common Prayer:

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent and to quash the proceeding for the years 2011-12 and 2012-13, respectively, in L.ds.No.A/277/2016/OMU and L.ds.No.A/278/2016/OMU dated 02.05.2016 and direct the first respondent to admit the appeal petition as per the ratio of the decision of the case law decided by the Supreme Court in the case of M/s.Ranjit Impex Vs. Appellate Deputy Commissioner and Another reported in (2013) 10 Supreme Court Cases 655.

For Petitioner : Mr.C.Baktha Siromoni
For Respondents : Mr.K.Venkatesh
Government Advocate

C O M M O N   O R D E R

1.Issue Notice. Mr.K.Venkatesh, learned Government Advocate, accepts notice on behalf of the respondents. With the consent of the learned counsels for parties, the writ petition is taken up for hearing and final disposal.

2.The captioned writ petitions pertains to two assessment years i.e., 2011-12 and 2012-13.

2.1.The petitioner is aggrieved by the two orders passed by the office of the respondents i.e., Appellate Deputy Commissioner (CT), Cuddalore, whereby, his statutory appeals were not accepted on the ground that 25% of the disputed tax had not been paid. The two impugned orders are passed on the same date i.e., 02.05.2016.

3.Learned counsel for the petitioner concedes that at the time of lodgement of the appeal, only 10% of the disputed tax had been paid and that the deficiency was removed only on 04.04.2016, upon payment of the balance 15% of the disputed tax.

4.Learned counsel for the petitioner says that the impugned orders are unsustainable, in view of the judgment rendered in

M/s.Ranjit Impex Vs. Appellate Deputy Commissioner and Another, (2013) 10 Supreme Court Cases 655.

5.Mr.Venkatesh, who appears for the respondents, says that in view of the judgment of the Supreme Court, he cannot contend otherwise.

6.I have heard the learned counsels appearing for the parties and perused the record.

7.The impugned orders, are orders which have been passed on the administrative side by the office of the respondent i.e., Appellate Deputy Commissioner (CT). By virtue of the impugned orders, the appeals filed by the petitioner have been returned on account of deficiency in payment of the requisite 25% of the disputed tax.

8.As correctly pointed out by the learned counsel for the petitioner that the deficiency in payment of tax was removed.

9.The Supreme Court in the judgment rendered in ***M/s.Ranjit Impex*** has drawn a distinction between the term "entertain" used in Section 51 of the Tamil Nadu Value Added Tax Act, 2006, which is the provision with the appeal, and its lodgement with the concerned appellate authority.

9.1.According to the said judgment, the use of the word 'entertain' would imply that the appeal will not be considered on merits, when it comes up for hearing, if the pre-requisite is not complied with, i.e., 25% of the disputed tax is not paid, which is different from what has happened in this case. The officer of the respondent has returned the appeals on the ground of deficiency in the payment of the requisite 25% of the disputed tax prior to their consideration. The observations made in ***M/s.Ranjit Impex,*** being relevant are extracted hereafter :

> ***"2.The factual narration would exposit that the appellant herein preferred an appeal before the Deputy Commissioner I, Commercial Taxes and at the time of presentation, a sum of Rs.8,52,472 was required to be deposited as per the calculation made under Section 51 of the Tamil Nadu Value Added Tax Act, 2006 (for brevity "the Act") but as it was not done, the memorandum of appeal was returned to him. The learned Single Judge disposed of the writ petition directing the assessee to comply with all***

the requirements as intimated by the appellate authority in the return memo dated 3-1-2011 and on such compliance, the appellate authority was directed to register the appeal and dispose of the same in accordance with the law.

3.In the writ appeal, it was contended that the appellate authority could not have returned the memorandum of appeal on the ground that Section 51 uses the term "entertain"and second, the amount that was due to the appellant from the Department was to be adjusted for the purpose of deposit as envisaged under Section 51 of the Act. The Division Bench came to hold that the proof of deposit of tax has to be produced at the time when the appeal is taken for consideration but not at the time of presentation of the appeal. As far as issue of adjustment is concerned, it is objected that the amount had properly been adjusted.

4.As far as the first issue is concerned, it is needless to say that the conclusion arrived at by the Division Bench is absolutely justified, for a

> ***condition to entertain an appeal does not mean that the memorandum of appeal shall be returned because of such non-compliance pertaining to pre-deposit. The only consequence is that the appeal shall not be entertained which means the appeal shall not be considered on merits and eventually has to be dismissed on that ground."***

10.In view of the aforesaid and given the fact that the defect was cured within a period of one month, I am inclined to allow the writ petitions. It is ordered accordingly. The impugned orders are set aside. The respondent i.e., Appellate Deputy Commissioner (CT), Cuddalore, is directed to decide the appeal on merits, in accordance with law. However, there shall be no order as to costs.

01.02.2017

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Index: Yes/ No
Internet: Yes/ No

To

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RAJIV SHAKDHER,J.

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