IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.14077 of 2017

M/s Jaya Vinayaga & Co.,
rep by its Prop. M.Anandan
Vairapalayam Main Road,
Erode. ...Petitioner

Vs.

1. The Appellate Deputy Commissioner (CT) (FAC),
   Erode, Commercial Taxes Building,
   Erode.

2. The Commercial Tax Officer,
   Chithode Circle,
   Erode.

...Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the first respondent in his proceedings in Na.Ka.97/2017/A dated 27.04.2017 and quash the same as illegal and direct the first respondent to accept and entertain the appeal filed by the petitioner and decide the appeal on merits and in accordance with law.

For Petitioner : Mr.S.Ramanathan

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

O R D E R

Mr.Venkatesh learned Government Advocate takes notice on behalf of the respondents. By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of first respondent dated 27.04.2017 rejecting the appeal filed by the petitioner only on the reason that a sum of Rs.100/- towards the appeal fee and 25% of the tax liability have not been paid by the petitioner at the time of presenting the appeal.

3. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

4. It is pointed out by the learned counsel for the petitioner that the said sum of Rs.100/- towards appeal fee was already paid by the petitioner on 27.02.2017 even before the date of the impugned order. Insofar as the payment of 25% of the tax liability is concerned, it is submitted by the learned counsel that the said sum was paid before the Assessing Officer and such payment is also reflected in the order of assessment followed by issuance of a certificate dated 30.05.2017 by the Assessing Officer. Therefore, he contended that as the petitioner has challenged the tax liability imposed on the entire turn over, the first respondent ought not to have dismissed the appeal without considering the above aspects.

5. The learned Government Advocate submitted that as the petitioner has not paid the 25% of the liability at the time of filing the appeal, the appeal was rejected. However, he is fair enough to accept the fact that the petitioner has satisfied the payment of such 25% of the tax liability even before the Assessing Officer, especially, when the very appeal was filed as against the tax liability imposed on the entire turn over.

6. Considering the above stated facts and circumstances and the payment made by the petitioner towards the appeal fee as well as 25% of the tax liability as discussed supra and also considering the fact that the appeal was not rejected on considering the merits of the matter, I am of the view that the Appellate Authority, namely, the first respondent has to reconsider the appeal on its own merits and pass orders in

accordance with law. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the petitioner is directed to represent the appeal within a period of two weeks from the receipt of a copy of this order. On receipt of such appeal, the first respondent shall consider the same on its own merits and pass orders in accordance with law within a period of four weeks thereafter, after giving due opportunity of hearing to the petitioner. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vsi
To

1. The Appellate Deputy Commissioner (CT) (FAC),
   Erode, Commercial Tax Building,
   Erode.
2. The Commercial Tax Officer,
   Chithode Circle,
   Erode.

+1 cc to M/s.S.Ramanathan Advocate sr 40422
+1 cc to the Special Government Pleader sr 40584

W.P.No.14077 of 2017

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