IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.25718 of 2017

M/s.Deepam Roadways,
rep. by its Proprietor Mr.T.R.Balaji,
No.56, Kandappa Chetty Street,
Chennai 600 001. ... Petitioner

Vs.

1. The Joint Commissioner (RP),
Commercial Taxes,
(Chennai North Division),
CT Building, Greams Road,
Chennai 600 006.

2. The Deputy Commercial Tax Officer,
Office of the Deputy Commissioner (CT)
Enforcement (North),
First Floor, PAPJM Buildings,
Greams Road, Chennai 600 006. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records in relation to the order of the 1st respondent in R.C.No.5883/2016/B1, dated 17.11.2016 and quash the same and further direct the 1st respondent to entertain the revision petition in consideration of arbitrary and unauthorized collection of tax contrary to the provisions of the Tamil Nadu Value Added Tax Act and CST Act.

For Petitioner : Mr.P.Haribabu

For Respondents : Mr.K.Venkatesh,
Government Advocate (Taxes)

O R D E R

Heard the learned counsel on either side. By consent of the learned counsel on either side, this Writ Petition is taken up for final disposal.

2. The petitioner, a Goods Transporter, has come up with this Writ Petition, challenging the order dated 17.11.2016 passed by the 1st respondent, rejecting his Revision Petition, as time barred.

3. Learned Government Advocate (Taxes) submitted that the impugned order of rejection is perfectly legal and valid, since the Revision Petition was presented well beyond the condonable period.

4. As regards condonation of delay, the Hon'ble Supreme Court in a landmark decision in the case of Basawaraj & another vs. The Special Land Acquisition Officer (2013) 14 SCC 811, has held as under:

> "15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means and adequate and enough reason which prevented him to approach the court within limitation. In case, a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any conditions whatsoever.The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

5. Under normal circumstances, this Court would have dismissed the Writ Petition, however, considering the peculiar facts and circumstances of the case and in view of the above decision of the Apex Court and taking note of the fact that the petitioner had already paid the entire tax and release order has been issued and also that the petitioner and his Manager fell sick disabling them to approach the authority within time, this Court is inclined to condone the delay.

6. Accordingly, the impugned order is set aside and the Writ Petition is allowed and the revisional authority is directed to entertain the revision petition and consider the same on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner. It is made clear that this order shall not be treated as a precedent. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

1. The Joint Commissioner (RP),
Commercial Taxes,
(Chennai North Division),
CT Building, Greams Road,
Chennai 600 006.

2. The Deputy Commercial Tax Officer,
Office of the Deputy Commissioner (CT)
Enforcement (North),
First Floor, PAPJM Buildings,
Greams Road, Chennai 600 006.

+1cc to Mr.P.Hari Babu, Advocate, S.R.No.71137
+1cc to the Special Government Pleader(T), S.R.No.71162

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CA(17/11/2017)