IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.29364 of 2017
and
W.M.P.Nos.31621 to 31623 of 2017

M/s. Sabari Electricals,
Rep by its Proprietor. ...Petitioner

.Vs.

The Commercial Tax Officer,
Polur Assessment Circle,
Polur Taluk,
Tiruvannamalai District. ...Respondent

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent and to quash the assessment proceedings in TIN 3306454153/2013-14 dated 15.09.2015 as illegal and direct the respondent to decide the mismatch issue in this case after providing an opportunity of personal hearing to the petitioner and pass orders.

For Petitioner : Mr. C.Baktha Siromoni
For Respondent : Mrs.Narmada Sampath Spl GP

O R D E R

Heard Mr. C.Baktha Siromoni learned counsel for the petitioner and Mrs.Narmada Sampath Special Government Pleader, accepting notice on behalf of the respondent. By consent on either side, the writ petition itself is taken up for final disposal.

2.The petitioner, which is a registered dealer on the file of the respondent, has filed this writ petition challenging the order of assessment dated 15.09.2015 passed under the Tamil Nadu Value Added Tax Act 2006 for the year 2013-14.

3. Several grounds have been raised by the petitioner in the

affidavit filed in support of the writ petition.

4. The learned counsel for the petitioner would submit that the petitioner may be permitted to approach the appellate authority as against the impugned assessment order dated 15.09.2015.

5. Since the impugned assessment order is dated 15.9.2015, under normal circumstances, if the petitioner prefers an appeal, it would be time barred and the appellate authority would have no jurisdiction to condone the delay. In several decisions, this Court held that when the Statute prescribes an outer time limit for condonation of delay, this Court, exercising its Jurisdiction under Article 226 of The Constitution of India, cannot extend the period of limitation.

6.However, one distinguishing factor in the instant case is that the petitioner made the pre-deposit of Rs. 45,000/- on 23.10.2015, which is well within a period of limitation for filing an appeal. The reason for belatedly filing the appeal is on account of fact that one of the employees of the petitioner, who was entrusted to prefer the appeal, though remitted the pre-deposit, ran away with the appeal papers. Therefore, the petitioner was prevented from presenting the appeal petition. Thus, considering the fact the petitioner has paid the pre-deposit well within a period of limitation for filing an appeal, this Court is inclined to grant liberty to the petitioner to prefer an appeal before the Appellate Authority namely the Deputy Commissioner, (CT) (Appeals), Vellore.

7.In the light of the above discussions, this writ petition is disposed by directing the petitioner to file an appeal before the Deputy Commissioner, (CT) (Appeals), Vellore, within 15 days from the date of receipt of a copy of this order. If such appeal is filed, the appellate authority shall not reject the appeal on the ground of limitation, as this Court observed that the petitioner paid a sum of Rs.45,000/- well within the period of limitation for filing the appeal. The Appellate Authority shall consider the appeal on merits and in accordance with law. Since the Appellate Authority is not a party to the writ petition, Registry is directed to mark a copy of this order to the Deputy Commissioner, (CT) (Appeals), Vellore.

8. In terms of the assessment order dated 15.09.2015, the petitioner has to pay a sum of Rs.78,935/- towards tax. The balance payment is under Section 27(4) of the State Act and out of Rs.78,935/-, the petitioner remitted Rs.45,000/- as acknowledged by the Sales Tax Clearance Inspector wide receipt

dated 23.10.2015. In the light of the same, the attachment of the petitioner's bank account shall be lifted till the disposal of the appeal by the Appellate Authority. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

SMN

To,

The Commercial Tax Officer,
Polur Assessment Circle,
Polur Taluk,
Tiruvannamalai District.

Copy To
The Deputy Commissioner,
Commercial Taxes and Appeals,
Vellore.

+1cc to Mr. C.Baktha Siromoni, Advocate, S.R.No.81597
+1cc to the Special Government Pleader, S.R.No.81772

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SK(CO)
CS/23/11/17