IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P. Nos.17122 and 17123 of 2007
and
M.P. No. 1 of 2007

Tvl.Sharma Marble Enterprises
Coimbatore, Rep by its Proprietor
Vinod Kumar Sharma
84, South Railway Line Street
Coimbatore-641 006. ... Petitioner

Vs.

1.The Sales Tax Appellate Tribunal
(Additional Bench)
C.T.Buildings
18, Balasundaram Road
Coimbatore-18.

2.The Deputy Commissioner
Coimbatore
18, Balasundaram Road
Coimbatore-18.

3.The Commercial Tax Officer
Ganapathy Circle
Coimbatore-6. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the third respondent in TNGST.2200815/99-2000 dated 25.04.2007 and quash the same and further direct the second respondent to pass order on the application dated 28.12.2006 submitted by the petitioner under sub-section (1) of Section 5 of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2006 after grant of personal opportunity of being heard.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.K.Venkatesh
Government Advocate [Taxes]

COMMON ORDER

Heard Mr.R.Senniappan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate [Taxes] appearing on behalf of the respondents.

2.The petitioner in W.P. No.17122 of 2007 has challenged the order passed by the third respondent, the Assessing Officer, dated 25.04.2007 and to direct the second respondent to pass orders on the application dated 28.12.2006 submitted by the petitioner under sub-section 1 of Section 5 of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2006.

3.In W.P.No.17123 of 2007, the petitioner has challenged the order passed by the first respondent /Tribunal dated 26.06.2006 by which the Tribunal declined to entertain the petitioner's appeal on the ground that the petitioner has not given the details of payment of the disputed tax for the purpose of entertaining the appeal and the delay in refiling the appeal is not convincing and therefore, the application filed by the petitioner for condonation of delay in refiling is rejected and consequently the appeal was dismissed.

4.W.P.No.17123 of 2007 is taken up for consideration first. The petitioner had received the order passed by the first appellate authority dated 29.04.2004 on 10.06.2004. The petitioner has 60 days limitation to file the appeal before the STAT and the last date expired on 09.08.2004. Though the petitioner has filed the appeal on time, 75% of the disputed tax was not remitted at the time of filing. Therefore, the Registry of the Tribunal returned the appeal papers. Subsequently, the entire disputed tax was paid on 07.01.2005 and the appeal papers were re-submitted along with it. The petitioner re-submitted the appeal with an application to condone the delay. The Tribunal was not convinced with the explanation offered and rejected the petition for condonation.

6.The Hon'ble First Bench of this Court, in some what on an identical issue in the case of M/s.Kavitha Chemicals Vs. The Commercial Tax Officer in W.A.No.692 of 2007 dated 27.07.2007, where there was a delay in filing the first appeal. After considering the facts of the case, the Court directed pre-deposit of 12.5% of the disputed tax for entertaining the appeal. The appellate authority was directed to consider the appeal

7.However, the said decision may not fully apply to the facts of the present case.

8.The respondent cannot dispute the fact that the petitioner has already paid 25% of the disputed tax at the time of filing the first appeal. The remaining 75% of the disputed tax has been paid on 07.01.2005 and there was a delay of 125 days and after complying with the conditions the petitioner has re-filed the appeal.

9.Considering the peculiar facts and circumstances of the case and taking note of the pendency of the writ petition from the year 2007, this Court is inclined to exercise its discretion by directing the Tribunal to consider the petitioner's appeal petition on merits and in accordance with law without rejecting the same on technicality and this order shall not be treated as a precedent and the order has been passed considering the peculiar facts and circumstances of the case.

10.Accordingly, W.P.No.17123 of 2007 is allowed and the impugned order is set aside with a direction to the Tribunal to take up the appeal [on file or appeal] filed by the petitioner on file and dispose of the same on merits.

11.In the light of the above, no further orders are required in W.P.No.17122 of 2007 and the same is closed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

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(Additional Bench)
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Coimbatore-18.

2.The Deputy Commissioner
Coimbatore
18, Balasundaram Road
Coimbatore-18.

3.The Commercial Tax Officer
Ganapathy Circle
Coimbatore-6.

+ 1 cc to Mr.R.Senniappan, Advocate,SR.72695

+ 1 cc to The Special Govt.Pleader, SR.72775

W.P.Nos.17122 & 17123 of 2007

NR 08/11/2017