IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.22458 of 2003

Tvl. Sam Turbo Industry Ltd.,
Rep. by its Joint Managing Director,
S.K.Senthil Kumar, Bharathi Park 7th Cross,
S.B.Colony, Coimbatore - 641 011. ... Petitioner

Vs.

The Appellate Assistant Commissioner
of Commercial Taxes, Coimbatore. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondent to admit the appeal papers filed by the petitioner without insisting for 25% pre-condition deposits amount of Rs.97,157/- as per Demand Notice issued by the respondent in Na.Ka.No.2990/2002 in MP.No.CST.80/2002 dated 23.04.2003.

For Petitioner : Mrs.R.Hemalatha
For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

O R D E R

Heard Mrs.R.Hemalatha, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent.

2.The question that arises for consideration in this case as what would be the quantum of pre-deposit that the petitioner has to make, while preferring an appeal to the respondent as against the order passed by the Assessing Officer, whether the petitioner has to remit 25% of the disputed tax or they can present an appeal without pre-depositing any amount. The problem arose on account of amendment made to the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) which came into effect on 14.06.1999, by which the statute made it mandatory that a dealer who is aggrieved by an order of assessment seeks to file an appeal has to mandatorily pre-deposit 25% of the disputed tax. Since the petitioner did not do so, the respondent passed the impugned order dated 23.04.2003, demanding 25% of the disputed tax.

3.The petitioner's contention is that though the assessment order was passed in the year 2002, for all purposes, the date of filing of the return for the relevant assessment year should be material and the relevant assessment year being 1997-98, the date will be 31.03.1998 and as on the said date there was no such mandatory condition to pre-deposit 25% for filing appeal.

4.The learned counsel appearing for the petitioner referred to the decision of the Hon'ble Division Bench in the case of Deputy Commercial Tax Officer, Tribunal Vs. Cameo Exports and others reported in [2006] 147 STC 218 (Mad) to support the contention that 25% of the disputed tax cannot be compelled to be paid.

5.In my considered view, it may not be necessary to decide the legal issue in the instant case for more than one reason; firstly, the present writ petition relates to the year 2003 and the appeal is pending before the Appellate Authority without any decision in the matter. Thus, without pre-judice to the interest of revenue, this Court suggested that the petitioner may be directed to deposit a reasonable amount of the disputed tax as a condition precedent for taking up the appeal. This suggestion is not seriously disputed by the counsel on either side.

6.Thus, leaving the legal issue open, there will be a direction to the petitioner to deposit Rs.35,000/- (Rupees Thirty Five Thousand only) towards the disputed tax liability within a period of two weeks from the date of receipt of a copy of this order. On production of the challan from payment, the respondent shall entertain the appeal petition filed and hear the petitioner in person and dispose of the same on merits and in accordance with law.

7.In the light of the above, the remaining amount of tax as quantified and demanded by the Assessing Officer shall remain stayed till the disposal of the appeal by the respondent. The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

abr

To

The Appellate Assistant Commissioner
of Commercial Taxes, Coimbatore.

+1cc to Mr.R.Hemalatha, Advocate, S.R.No.56516
+1cc to Special Government Pleader(Taxes), S.R.No.56203

W.P.No.22458 of 2003

GJ(CO)
GN(06/09/2017)