BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.08.2017
CORAM:
THE HONOURABLE MR.JUSTICE T.RAJA
W.P.(MD)No.14452 of 2017
and
W.M.P.(MD)No.11318 of 2017

M/s.Raja Enterprises,
No.130, W.B. Road,
Tiruchirappalli – 620 008,
Rep. by its Partner. ... Petitioner

Vs.

1. The Appellate Deputy Commissioner,
(Commercial Taxes),
Tiruchirappalli.

2. The Assistant Commissioner
(Commercial Taxes),
Commercial Tax Department,
Mailam Chanthai - I Circle,
Tiruchirappalli – 620 020. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records relating to the proceedings of the second respondent herein in Ref.No.33763580380/2017/A3, dated 27.07.2017 and quash the same.

For Petitioner : Mr.AR.L.Sundaresan
Senior Counsel
for Mrs.AL.Ganthimathi

For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

ORDER

Mr.R.Karthikeyan, learned Additional Government Pleader takes notice for the respondents. By consent, the Writ Petition is taken up for final disposal.

2.The grievance of the Petitioner Enterprises is that they received an order dated 28.04.2017, passed in VAT Appeal No.155/2015, by the first respondent, only on 06.06.2017 and they are entitled to file an appeal before the appellate authority within 60 days. The Petitioner Enterprises have been issued with another proceeding dated 27.07.2017 of the second respondent, demanding a sum of Rs.42,73,400/- within three days from the date of receipt of the said notice.

3.The learned Senior Counsel appearing for the petitioner submitted that a sum of Rs.3,00,000/- was deposited on 07.09.2015 and in addition thereto, the second respondent has withdrawn a sum of Rs.2,43,958/- from the Bank Account of the petitioner on 28.07.2016. While so, demanding the balance amount is wholly unjustified and untenable, as it has not yet decided by the Appellate Authority.

4.I find some merits on the abovesaid submission. The reason is, when the order dated 28.04.2017, received by the petitioner on 06.06.2017, is appealable within 60 days from the date of receipt of that order, the second respondent cannot proceed further before the expiry of the appeal time and therefore, the impugned order is liable to be set aside.

5.Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the respondents fairly submitted that the matter can be disposed of by giving time to the petitioner to file appeal within the specified time limit as per law and only after passing of any order by the Appellate Authority, the respondents would be in a position to proceed further.

6.Recording the abovesaid statement, this Writ Petition stands disposed of directing the petitioner to file an appeal within the period of limitation as per law *i.e.,* within 120 days [60 + 60 days] and it is open for the Appellate Authority to consider the said appeal and pass orders on merits and in accordance with law and till such time, the impugned order is stayed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To
1. The Appellate Deputy Commissioner,
(Commercial Taxes),
Tiruchirappalli.

2. The Assistant Commissioner
(Commercial Taxes),
Commercial Tax Department,
Mailam Chanthai - I Circle,
Tiruchirappalli – 620 020.

+1cc to Mrs.AL.Ganthimathi, Advocate Sr.No.70708

SMN2
VB/GT/SAR3/12/09/2017/2P/4C