In the High Court of Judicature at Madras

Dated : 03.8.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.20069 of 2018 &
WMP.Nos.23529 & 23530 of 2018

Tvl.Vinayaga Traders, rep.by
its Proprietor N.Muthu Krishnan ...Petitioner

Vs

1.The Deputy Commercial Tax Officer,
Bazaar Circle, Salem.

2.The Appellate Deputy Commissioner
(CT) (FAC), Salem. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the 1st respondent in TIN/3377278337/2014-15 dated 01.12.2016 and culminating in the order of the 2nd respondent in M.P.No.27/2018 dated 23.3.2018 and quash the order dated 01.12.2016 of the 1st respondent culminating in the order dated 23.3.2018 of the 2nd respondent passed therein.

For Petitioner : Mr.A.N.R.Jayaprathap

For Respondents : Mr.M.Hariharan, AGP

ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has filed this writ petition challenging the order passed by the second respondent - Appellate Authority dated 23.3.2018 as well as the assessment order passed by the first respondent dated 01.12.2016.

3. The Appellate Authority rejected the appeal petition on the ground that it is beyond the condonable period stipulated

under the statute. Admittedly, there is a delay of 12 days over and above the period of 60 days. Therefore, the second respondent was fully justified in refusing to entertain the appeal. However, taking note of the cause pleaded by the petitioner for not being able to file the appeal within time by stating that he was suffering from certain ailments and was advised to take bed rest, which was duly supported by a medical certificate, this Court is inclined to exercise its discretion making it clear that this should not be treated as a precedent.

4. Accordingly, the writ petition is partly allowed, the order passed by the second respondent dated 23.3.2018 is set aside and the delay in filing the appeal is condoned. The petitioner is directed to represent the appeal papers along with a copy of this order within a period of one week from the date of receipt of the same and on receipt of such appeal papers, the second respondent shall take on file the appeal and proceed to decide the same in accordance with law. As the petitioner has already paid 25% of the disputed tax, till the petitioner moves for stay before the Appellate Authority, which the petitioner shall do immediately, the first respondent shall not initiate any coercive action against the petitioner. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

RS
To

1.The Deputy Commercial Tax Officer,
Bazaar Circle, Salem.

2.The Appellate Deputy Commissioner (CT) (FAC),
Salem.

+1cc to Mr.S.Sivanandan, Advocate SR.No.53336
+1cc to Special Government Pleader SR.No.53643

WP.No.20069 of 2018 & WMP.
Nos.23529 & 23530 of 2018

EV(CO)
GN(24/08/2018)