In the High Court of Judicature at Madras

Dated : 13.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.9114 of 2018 & WMP.Nos.10940 & 10941 of 2018

Sri Lavanyaa Stores, rep.by its Proprietor N.Lavanyaa ...Petitioner

Vs

The Deputy Commercial Tax Officer, Bhavani Circle, Bhavani, Erode District. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the respondent in the impugned proceedings made in TIN 33692943759/2014-15 pertaining to the assessment year 2014-15 dated 14.8.2015 and quash the same.

For Petitioner : Ms.K.C.Aarthi
For Respondent : Mrs.G.Dhana Madhri, GA

ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has challenged the assessment order for the year 2014-15 under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

3. The petitioner intended to file an appeal against the assessment order and it appears that they had engaged a counsel. It appears that they also remitted 25% of the disputed tax, which being a sum of Rs.37,267/-, for which, a receipt has been given by the respondent dated 03.9.2015. Though 25% of the disputed tax was paid, the counsel, to whom the papers were entrusted, did not prefer the appeal.

4. The petitioner would state that they were under the bona fide belief that the appeal is pending. Only after the distraint notice was issued, the petitioner came to know that the appeal was not presented.

5. In the meantime, the petitioner also paid a further amount of tax and the learned counsel for the petitioner submits that as on date, more than 50% of the disputed tax has been paid. Considering the fact that the petitioner remitted 25% of the disputed tax within the appeal time provided under the said Act, this Court is inclined to grant an opportunity to the petitioner to prosecute the appeal.

6. Accordingly, the writ petition is disposed of by directing the petitioner to present the appeal papers before the Appellate Deputy Commissioner (CT) along with a copy of this order and a photostat copy of the receipt for payment of 25% of the disputed tax on 03.9.2015 for a sum of Rs.37,267/- and also a proof to show that subsequent payment of tax has been made. On production of the above documents, the Appellate Authority shall entertain the appeal and decide the same on merits and in accordance with law without rejecting the appeal on the ground of limitation. Till the appeal is heard and disposed of, the remaining tax and penalty, as quantified in the impugned assessment order, shall remain stayed. This is so because the petitioner has already paid more than 50% of the disputed tax. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

To

The Deputy Commercial Tax Officer,
Bhavani Circle, Bhavani, Erode District.

+ 1 cc to M/s. K. Venkatesh, Advocate Sr.27893
+ 1 cc to Special Government Pleader Sr.28204

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AD(CO)
EU(17/05/2018)