In the High Court of Judicature at Madras

Dated : 25.02.2019

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The Honourable **Dr.Justice ANITA SUMANTH**

W.P.No.5309 of 2018

Tvl.Geo Granites
rep. By its Managing Partner
No.4/400, Madhahalli,
Palacode – 636 808,
Salem Dt. ...Petitioner

Vs

1. The Appellate Deputy Commissioner [ST]
   Salem.

2. The State Tax Officer,
   Palacode Assessment Circle,
   Salem. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance a Writ of Certiorarified Mandamus calling for the records of the 1st respondent vide his proceedings in M.P.No.3/2019 dated 28.01.2019 and to quash the same and further direct the 1st respondent to entertain the appeal papers to be re-presented by the petitioner after condoning the delay of 139 days and upon such re-presentation, admit the appeal and pass orders on merits and in accordance with law.

For Petitioner : Mr. R.Ganesh Kanna
For Respondent : Mr.Mohammed Shafiq, Spl.G.P.

O R D E R

Mr.Mohammed Shafiq, learned Special Government Pleader takes notice for the respondents. By consent of both sides, this Writ Petition is disposed of finally at the stage of admission.

2. The petitioner challenges proceedings in M.P.No.3 of 2019 dated 28.01.2019 and seeks quashing of the same.

3. The aforesaid proceedings have been issued by the Appellate Deputy Commissioner (ST), Salem, rejecting the request of the petitioner for condonation of delay of 139 days in presenting his appeal challenging an order of assessment passed by the State Tax Officer dated 12.06.2018 in respect of the period 2016-17.

4. The appeal had initially been returned stating that the mandatory pre-deposit had not been remitted. When the petitioner pointed out that the pre-deposit had, in fact, been made and provided proof of the same, the first respondent had proceeded to consider admission of the appeal, finding that the appeal had been filed beyond the permissible period of thirty day extended upon condonation by another thirty days. The appeal was thus returned by the Appellate Deputy Commissioner(ST), the first respondent herein. Learned counsel for the petitioner relies on the decision of this Court dated 06.10.2015 in W.P.No.31498 of 2015 in the case of *Tvl.M.K.Agencies V. The Appellate Deputy Commissioner (CT) and another,* wherein the appeal filed belatedly by the petitioner in that case was ordered to be taken on file and considered on merits.

5. The conclusion of the first respondent is in accordance with law insofar as section 51 of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') provides for a time limit of 30 days from date of receipt of order of assessment within which an appeal is liable to be filed, extendable upon condonation sought and allowed by the Assessing Authority by

another 30 days. There can be no flexibility with regard to the above timeline, which is statutorily fixed, for filing of appeal.

6. However, in the present case, the delay was occasioned on account of the medical reason. Learned counsel for the petitioner draws attention to Medical Certificate dated 27.11.2018 where one Dr.R.Senthilnathan, Ortho Trauma and Orthopaedic Surgeon at Maruthi Nursing Home, Krishnagiri, certifies that the petitioner was suffering from Lumbar Disc Prolapse with Sciatica and had undergone treatment in the hospital in the form of Physiotheraphy and back strengthening exercise and had been advised to take bed rest for six months.

7. Discretion under Article 226 of the Constitution of India is wide and I am of the view that the delay occasioned in filing of the appeal can be condoned in the light of the reasons adduced by the petitioner, for the belated filing of the appeal.

8. In fine, this Writ Petition is allowed and the delay of 139 days in filing the appeal is condoned. The petitioner will re-present its appeal before the first appellate authority within a period of two (2) weeks from date of receipt of a copy of this order. Upon such re-presentation, the first appellate authority is directed to take the same on file and consider the appeal on merits and in accordance with law without further reference to limitation. No costs.

25.02.2019

Speaking (or) Non Speaking Order
Index : Yes or No

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Dr.ANITA SUMANTH,J.

Sl

To

1. The Appellate Deputy Commissioner, Salem.

2. The State Tax Officer,
   Palacode Assessment Circle, Salem.

W.P.No.5309 of 2018

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