IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.6295 and 6296 of 2018
and
W.M.P.Nos.7777 and 7778 of 2018

Choudhary Metal Corporation,
represented by its Proprietor,
G.Mahendra Kumar,
No.80/58, Mogappair Road,
Mannurpet, Padi,
Chennai – 600 050. ..Petitioner in both petitions

vs.

1.The Appellate Deputy Commissioner (ST),
Chennai (South),
Greams Road,
Chennai – 600 006.

2.The Joint Commissioner (ST), (South),
Greams Road,
Chennai – 600 006.

3.The Commercial Tax Officer,
Anna Nagar Assessment Circle,
Chennai – 600 049. .. Respondents in both petitions

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the first respondent in Rc.88/2018/A1 in TIN/33580020870/2015-16 and Rc.89/2018/A1 in TIN/33580020870/2016-17 dated 19.02.2018 and quash the same.

For Petitioner : Mr.S.Ramanan

For Respondents : Mr.Hariharan
Additional Government Pleader

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COMMON ORDER

Heard Mr.S.Ramanan, learned counsel for petitioner and Mr.M.Hariharan, learned Additional Government Pleader for respondents.

2. In these writ petitions, the petitioner has challenged the orders passed by the first respondent returning the petitioner's appeal petitions on the ground that they are filed beyond the period of 60 days. Under normal circumstances, this Court would not interfere with the impugned orders because under the provisions of the Tamil Nadu Value Added Tax Act, the respondents do not have power to condone the delay beyond a period of 60 days. However, the facts of the present cases have to be taken into consideration and if the same is done, it calls for a different relief to be granted to the petitioner. As against the assessment orders dated 29.06.2017 for the Assessment Years 2015-16 and 2016-17, the petitioner, instead of filing appeals before the first respondent mistakenly filed revision petitions before second respondent. Admittedly, the revision petitions were filed well within the period of limitation had it been filed as appeals before the first respondent. The revisional authority entertained the revision petition in R.P.No.153 of 2017 and under orders dated 29.12.2017 rejected the same

stating that as against the assessment orders, an appeal lies to the first respondent u/s.51 of the Tamil Nadu Value Added Tax Act and the petitioner cannot invoke the provisions of Section 54 of the Act. It is not clear as to how the revisional authority did not find out this aspect even when the revision petitions were presented before his office. If the defect has been noted and the revision petitions were returned then and there instead of numbering the same and ultimately, passing orders on 29.12.2017 rejected it as not maintainable. Be that as it may, immediately petitioner has paid 25% of the disputed tax on 09.02.2018 ad filed the condone delay petitions in preferring appeals. Thus, considering the conduct of the petitioner, this Court is inclined to pass appropriate directions so that the appeals can be heard and decided by the first respondent on merits.

For the above reasons alone, these Writ Petitions are allowed and the impugned orders are set aside and the delay in filing the appeals is condoned in the peculiar facts and circumstances of the case. The first respondent is directed to entertain the appeals and decide the same in accordance with law. No costs. Connected miscellaneous petitions are closed.

13.04.2018

Index : Yes/No, Internet : Yes
gm

T.S.SIVAGNANAM, J

gm

To

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