In the High Court of Judicature at Madras

Dated : 09.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.8276 of 2018

Tvl.Global Franchise Architects
Private Limited, rep.by its
Manager - Finance & Accounts ...Petitioner

Vs

1.The Appellate Deputy Commissioner
(ST) (FAC), Chennai Central,
Chennai-6.

2.The Assistant Commissioner (CT),
Vadapalani Assessment Circle,
Ground Floor, PAPJM Annexe
Building, Greams Road, Chennai-600 006. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent herein in N.Dis.154/A/2018 dated 07.3.2018, quash the same as unlawful and further direct the 1st respondent to accept the appeal papers that are to be re-submitted by the petitioner without raising any issue with respect to the period of limitation in resubmitting the appeal papers thereby enabling the petitioner to conduct the appeal before the 1st respondent, who shall then pass orders in accordance with law.

For Petitioner : Mr.R.Ganesh Kanna
For Respondents : Mrs.G.Dhana Madhri, GA

ORDER

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

2. The petitioner is aggrieved by an endorsement made by the first respondent - Appellate Authority returning the petitioner's appeal petition on the ground that it has been represented after a delay of 9 months.

3. As against the order of assessment for the year 2013-14 dated 24.4.2017 under the provisions of the Tamil Nadu Value

Added Tax Act, 2006, the petitioner filed an appeal before the first respondent on 26.4.2017. Though the appeal petition was presented on time, the mandatory requirement of pre-deposit of 25% of the disputed tax was not complied with. Consequently, by memo dated 09.5.2017, the appeal papers were returned to the petitioner, giving 10 days' time for representation. However, the petitioner did not take immediate steps to remit the pre-deposit of 25% of the disputed tax, but paid the same only on 27.2.2018 and represented the appeal papers along with an application for condonation of delay. The request made by the petitioner has been rejected and the appeal papers were returned.

4. In my considered view, the action of the first respondent - Appellate Authority is perfectly legal and valid, as the appeal petition, filed by the petitioner on 26.4.2017 without payment of the mandatory pre-deposit, is no appeal in the eye of law. Therefore, the return dated 09.5.2017 was justified. However, the petitioner was granted 10 days' time to comply with the defects and represent the appeal papers. This opportunity was availed by the petitioner very belatedly. Therefore, the petitioner's appeal petition was rightly returned.

5. This Court would be fully justified in dismissing the writ petition and confirming the order passed by the first respondent. However, this Court finds that the petitioner is a small dealer and that the tax effect in the appeal is also not very huge, apart from the fact that 25% of the disputed tax to the tune of Rs.2,05,734/- has already been paid by the petitioner. While clarifying the legal position, this Court is inclined to grant one opportunity to the petitioner to pursue the appeal petition. But, this order shall not be shown as a precedent in future.

6. In the light of the above discussion, the writ petition is disposed of by directing the petitioner to represent the appeal, along with a copy of this order, before the first respondent within a period of one week from the date of receipt of a copy of this order. If such appeal is represented, the Appellate Authority shall take the appeal on file, number the same and decide the matter on merits and in accordance with law. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

RS

To
1.The Appellate Deputy Commissioner (ST) (FAC), Chennai Central, Chennai-600 006.
2.The Assistant Commissioner (CT), Vadapalani Assessment Circle, Ground Floor, PAPJM Annexe Building, Greams Road, Chennai-600 006.

+1 CC to Mr.A. Ravichandran, Advocate sr 26093.
+1 CC to Spl. Govt. Pleader(T) sr 26452.

WP.No.8276 of 2018

SVN(CO)
SP(23/05/2018)