IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2018

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.No.3422 of 2018 &
W.M.P.No.4195 of 2018

Tvl. Raja Spiritual Super Market Pvt. Ltd.
Represented by its Managing Director
B.Nagarajan, No.443, Gandhi Road
Kancheepuram
Kancheepuram District .. Petitioner

1 The Appellate Deputy Commissioner
Commercial Taxes, Chennai South
3rd Floor, PAPJM Buildings Annexe
No.1, Greams Road, Chennai - 600 006.

2 The Assistant Commissioner of Commercial Taxes
Commercial Taxes
Kancheepuram Assessment Circle
Kancheepuram, Kancheepuram District
.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records comprised in the impugned order passed by the 1st respondent in N.Dis. No.772/2017/A1, dated 21.12.2017 and quash the same as unconstitutional and violation of principles of natural justice.

For Petitioner : Mr.K.M.Malarmannan

For Respondent : Mr.M.Hariharan
Addl. Govt. Pleader (T)

ORDER

Mr.M.Hariharan, learned Additional Government Pleader (Tax), takes notice for the respondents. By consent, the main writ petition itself is taken up for disposal at the admission stage itself.

2. The petitioner has filed the above writ petition to issue a Writ of Certiorari to call for the records comprised in the impugned order passed by the 1st respondent dated 21.12.2017 and to quash the same as unconstitutional and violation of principles of natural justice.

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3. It is the case of the petitioner that the 2nd respondent has passed the impugned order against the petitioner without giving any opportunity of personal hearing to the

petitioner. As against the order passed by the 2nd respondent, the petitioner preferred an appeal before the 1st respondent after paying 25% of the disputed tax on 28.07.2017. The 1st respondent returned the appeal petition preferred by the petitioner on 31.07.2017 on the ground that the proof of payment of disputed tax was not produced. The final receipt of the disputed tax was received by the petitioner on 17.10.2017 from the 2nd respondent. Further, since the petitioner's authorised representative met with an accident, the appeal could not be represented in time before the 1st respondent. The 1st respondent represented the appeal with a delay of 132 days. However, the 1st respondent declined to condone the delay in representing the papers and dismissed the appeal as not entertainable.

4. Mr.K.M.Malarmannan, learned counsel appearing for the petitioner submitted that in similar circumstances, this Court in W.P.No.5170 of 2016, dated 11.02.2016 has passed the following order :-

> "4. Having regard to the submissions made by the learned counsel on either side, I permit the petitioner to file appeal against the impugned order dated 20.05.2015, within a period of two weeks from the date of receipt of a copy of this order and on such filing of the appeal, the second respondent is directed to entertain the same without raising any issue with regard to limitation and pass appropriate orders, on merits and in accordance with law, after affording due opportunity to the petitioner, as expeditiously as possible."

5. Mr.M.Hariharan, learned Additional Government Pleader, appearing for the respondents submitted that the order passed in W.P.No.5170 of 2016, dated 11.02.2016 can be followed in this writ petition also.

6. Having regard to the submissions made by the learned counsel on either side, following the order passed in W.P.No.5170 of 2016, the impugned order dated 21.12.2017 is set aside. The petitioner is directed to represent the papers within a period of one week from the date of receipt of a copy of this order and on such filing of the appeal, the 1st respondent is directed to entertain the same without raising any issue with regard to limitation and pass appropriate orders, on merits and in accordance with law, after affording due opportunity to the petitioner, as expeditiously as possible.

With these observations, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

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//True Copy//

Sub Assistant Registrar

Rj

To

1 The Appellate Deputy Commissioner
Commercial Taxes
Chennai South
3rd Floor, PAPJM Buildings Annexe
No.1, Greams Road
Chennai - 600 006.

2 The Assistant Commissioner of Commercial Taxes
Commercial Taxes
Kancheepuram Assessment Circle
Kancheepuram
Kancheepuram District

+1cc to M/s.K.M.Malarmannan, Advocate Sr.No.11962
+1cc to Special Government Pleader SR.No.12016

GMR(CO)
sm:1.3.2018

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