In the High Court of Judicature at Madras

Dated : 20.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.14753 of 2018 & WMP.No.17432 of 2018

Tvl.Venus Tiles, rep.by its
Proprietor N.Chandru ...Petitioner

Vs

1.The Assistant Commissioner (CT),
Sholinganallur Assessment Circle,
Plot No.141, I Main Road, Burma
Colony, Perungudi, Chennai-96.

2.The Appellate Deputy Commissioner
(CT) (FAC), Chennai (East), Greams
Road, Chennai-6. ...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 on the files of the 2nd respondent in R.C.No.611/2017/A1 dated 27.2.2018, quash the same and further direct the 2nd respondent to admit the appeal in Form X filed by the petitioner on 4th October 2017 against the order of the 1st respondent in TIN.33760927139/2011-12 dated 30.6.2017.

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.M.Hariharan, AGP

ORDER

Mr.M.Hariharan, learned Additional Government Pleader 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 the order passed by the second respondent – Appellate Authority rejecting the appeal petition on the ground that it was represented beyond the period of 20 days (10 + 10) and that the respondent cannot entertain the appeal in the light of the embargo under Rule 14(3) of the Tamil Nadu Value Added Tax Rules, 2007.

3. As against the order of assessment, the appeal was presented by the petitioner pursuant to the direction issued by

this Court in W.P.No.24689 of 2017 dated 14.9.2017, in which, the petitioner was granted 15 days time from the date of receipt of a copy of the said order to file an appeal. This has been complied with by the petitioner, as the appeal was filed on 04.10.2017. However, the mandatory pre-deposit was not made. Therefore, the second respondent rightly returned the appeal petition on 13.10.2017 and granted 10 days time for representation. But, the petitioner did not represent the papers within the said period, but represented the papers only on 27.11.2017 after effecting the pre-deposit of 25% of the disputed tax.

4. The petitioner would state that the original assessment order was filed before this Court in the earlier writ petition namely W.P.No.24689 of 2017, that the petitioner had difficulty in obtaining the same from the Registry of this Court and that therefore, there is a delay.

5. In my considered view, it may not be necessary to undertake a dead horse beating exercise in the instant case, since the appeal petition is being presented by the petitioner pursuant to the directions issued by this Court. Therefore, considering the peculiar facts and circumstances of the case, this Court is of the considered view that the appeal can be entertained without rejecting the same on the ground of delay in representation. It has been held that strict interpretation for delay in filing an appeal need not be adopted in all cases where there is a delay in representation. This Court is inclined to accept the stand taken by explaining the reason for the delay.

6. Accordingly, the writ petition is allowed, the impugned order is set aside the petitioner is directed to represent the appeal papers within a period of three days from the date of receipt of a copy of this order. The appeal shall be entertained by the second respondent and proceeded in accordance with law.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To
1.The Assistant Commissioner (CT), Sholinganallur Assessment Circle,
Plot No.141, I Main Road, Burma Colony, Perungudi, Chennai-96.

2.The Appellate Deputy Commissioner (CT) (FAC), Chennai (East), Greams
Road, Chennai-6.

+1cc to Mr.R.Senniappan, Advocate Sr.No.38642
+1cc to Special Government Pleader (Taxes) Sr.No.39081

SPD(CO)
sm:2.7.2018

RS

WP.No.14753 of 2018&
WMP.No.17432 of 2018