In the High Court of Judicature at Madras

Dated : 22.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.15073 of 2018

P.Kalyanakumar, Proprietor,
M/s.Bell Book House ...Petitioner
Cuddalore.

Vs

1.The Appellate Deputy Commissioner
(Commercial Taxes), Cuddalore.

2.The Deputy Commercial Tax Officer,
Cuddalore Town, Cuddalore. ...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 relating to the impugned proceedings passed in Na.Ka.A/66/2017 dated 03.5.2017 on the file of the 1st respondent herein, quash the same and consequently direct the 1st respondent herein to entertain the appeal filed by the petitioner on 23.1.2017 and dispose of the same on merits.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : 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. On a reading of the impugned order, this Court finds that the approach of the Appellate Authority appears to be hyper technical. Admittedly, the petitioner paid Rs.30,000/- as against the total tax assessed at Rs.40,353/-. The only mistake that appears to have been committed by the petitioner is that they remitted the tax even prior to receipt of the assessment order. The explanation given by the petitioner is that the Assessing Officer had informed him that he has no other option except to confirm the proposal in the revision notice dated 06.9.2016 and that if aggrieved, they can pay the tax amount and

file an appeal. Heeding to the advice given by the second respondent, the petitioner paid Rs.30,000/-, which has been acknowledged.

3. After receipt of the assessment order, the petitioner filed an appeal and also paid the appeal fee. Of-course, there is a delay of 24 days, which is within the condonable period. However, the Appellate Authority returned the papers on the ground that the disputed tax has been paid much prior to filing of the appeal.

4. What is required to be seen by the Appellate Authority is that 25% of the disputed tax has been paid regardless of the date of payment because without payment of mandatory pre-deposit, the appeal itself is not maintainable. In my considered view, the petitioner has complied with the condition of pre-deposit and their bona fides cannot be doubted.

5. For the above reasons, the writ petition is allowed, the impugned order is set aside and the delay in filing the appeal before the first respondent is condoned. The first respondent is directed to take the appeal on file and decide the same on merits and in accordance with law. Till the appeal is heard and disposed of, the remaining amount of tax and penalty, which has been levied shall remain stayed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

To

1.The Appellate Deputy Commissioner
(Commercial Taxes), Cuddalore.

2.The Deputy Commercial Tax Officer,
Cuddalore Town, Cuddalore.

+1cc to Mr.K.Govi Ganesan, Advocate SR.No.39727
+1cc to Special Government Pleader(Taxes) SR.No.40005

RS

WP.No.15073 of 2018

GN(25/06/2018)