IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2018

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.16236 of 2018

Tvl.Empee Distilleries Ltd.,
Represented by its General Manager
Empee Tower, No.59, Harris Road
Pudupet, Chennai - 600 002 .. Petitioner

Vs

1.The Additional Commissioner of
Commercial Taxes (CT)
Large Tax Payers Unit
Chennai - 600 008

2.The Deputy Commissioner (CT) IV
Large Tax Payers Unit
Chennai- 600 008 .. Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent vide his memo in N.Dis.1658/2018/A4 dated 19.06.2018 and quash the same as unlawful and arbitrary and further direct the 1st respondent to accept the revision papers to be re-submitted by the petitioner without raising any issue with respect to the period of limitation for re-submission thereby enabling the petitioner to conduct the revision petition before the 1st respondent who shall then pass orders in accordance with law.

For Petitioner : Mr.R.Ganesh Kanna
For Respondents: Ms.Narmadha Sampath
Additional Advocate General

Mr.M.Hariharan
Additional Government Pleader

ORDER

Heard Mr.R.Ganesh Kanna, learned counsel for the petitioner and Ms.Narmadha Sampath, learned Additional Advocate General assisted by Mr.M.Hariharan, learned Additional Government Pleader appearing for the respondents.

2. This writ petition has been filed challenging a memo issued by the first respondent dated 19.06.2018, by which the delay in filing the revision was declined to be condoned on the ground that it is statutorily impermissible to do so. The petitioner/Assessee is already under litigation before this Court in respect of the Sales Tax arrears and the said writ petition in W.P.No.3991 of 2018 is being heard by this Court. Apart from that, there is also an order passed in a Civil Suit, namely C.S.No.161 of 2018 in Application No.2215 of 2018 dated 19.03.2018 filed by M/s.Gimpex Private Limited, in which the petitioner herein is the first defendant. A Garnishee application has been taken out in the said suit, wherein a prohibitory order was granted restraining TASMAC from effecting any payments to the appellants, which includes the petitioner herein vide order dated 28.03.2018. On appeal before a Division Bench of this Court in O.S.A.No.155 of 2018, the said order was confirmed by judgment dated 04.06.2018, except to the extent that there was a clarification that the prohibitory order should be construed to mean to the extent of the suit claim and if any excess amount is payable by the Garnishee to the appellants can be clarified and paid. Thus, I find that there are circumstances, which pervented the petitioner from persuing the claim before the first respondent at the appropriate time.

3. Therefore, considering the peculiar facts and circumstances of the case, this Court is inclined to exercise discretion to condone the delay of 5 days in filing the revision. However, it is made clear that this order shall not be treated as a precedent and has been passed taking into consideration the peculiar facts and circumstances of the case.

4. In the result, the writ petition is allowed and the impugned order is set aside and the delay of 5 days in preferring the revision petition is condoned and the revional authority is directed to entertain the revision petition and decide the same on merits and in accordance with law. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gpa/msrm

To

1.The Additional Commissioner of
Commercial Taxes (CT)
Large Tax Payers Unit
Chennai - 600 008

2.The Deputy Commissioner (CT) IV
Large Tax Payers Unit
Chennai- 600 008.

+ 1 cc to Special Government Pleader Sr.43703
+ 1 cc to Mr.A.Ravichandran, Advocate Sr.43262

Writ Petition No.16236 of 2018

(CO-AR)
EU(16/07/2018)