IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.12.2018
CORAM:
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
W.P.No.32061 of 2018
and
WMP.No.37310 of 2018

M/s.Sri Gayathri Cashews.,
Represented by its Partner
Mr.S.Rajanikanth
113, North Street,
Panickenkuppam, Panruti (T.K)
Cuddalore District - 607 106. ..Petitioner

Vs

The Commercial Tax Officer.,
Panruti (Rural) Assessment Circle,
Panruti ..Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the impugned proceedings of the respondent in TIN No.33674500620/2014-2015 dated 29.7.2016 and quash the same insofar as the penalties levied under Section 22(5) and Section 27(4) of the Tamil Nadu Value Added Tax Act, 2006 is concerned as contrary to law and against the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.M.Hariharan
Additional Government Pleader

O R D E R

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 29.07.2016 passed in respect of assessment year 2014-15.

3. Mr.P.Rajkumar, learned counsel for the petitioner submitted that the petitioner is aggrieved against the imposition of penalty alone, as they have already paid the tax liability by admitting the same, during the inspection conducted by the Inspecting Officials on 05.10.2015. The balance sum of Rs.72,154/- towards the tax liability will also be paid by the petitioner immediately. The contention of the petitioner against the imposition of penalty is that the authority has erred in

imposing penalty, when admittedly, the petitioner has paid the tax liability even before issuing the notice of proposal on 09.05.2016. Therefore, the learned counsel contended that the order imposing penalty cannot be sustained. The learned counsel sought to rely upon certain decisions in support of such contention.

4. On the other hand, the learned Additional Government Pleader for the respondent contended that the present writ petition is not maintainable for the reason that the petitioner has approached this Court belatedly after a period of 2½ years and if at all, the petitioner is aggrieved, the learned Additional Government Pleader contended that they ought to have filed an appeal before the Appellate Authority within the stipulated time.

5. Heard both sides.

6. This writ petition is filed challenging the order of the respondent dated 29.07.2016. Thus, it is evident that there is a delay of nearly 2½ years in challenging the impugned order. Of course, the reason for such delay is sought to be explained in the affidavit filed in support of this writ petition, by contending that the petitioner orally requested the respondent to revise the order and such request was not considered. I do not think that in the absence of any written request made by the petitioner seeking for revision of assessment, the so called oral request made by the petitioner cannot be taken into account for entertaining this writ petition. However, as it is contended that the petitioner has paid the tax liability even before issuance of notice of proposal and as it is claimed that such action of the Assessee will eschew his liability from payment of penalty, this Court is of the view that all these contentions can be raised by the petitioner before the Appellate Authority by filing regular appeal. However, since such Appellate Authority is empowered to entertain the appeal only within a period of 60 days including the condonable period, this Court is inclined to give an indulgence to the petitioner to approach the Appellate Authority and file the appeal so as to enable such authority to decide the merits of the matter in accordance with law. However, such indulgence can be shown to the petitioner only by putting them on some terms, since belated approach of the petitioner cannot be left as it is without putting them on some terms for filing the appeal before the Appellate Authority as against the impugned order of assessment.

7. Accordingly, this writ petition is disposed of under the following terms and conditions:

> (a) The petitioner shall pay a sum of Rs.25,000/- to the credit of the Hon'ble Chief Justice Relief Fund (Payable in Accounts Section of the High Court Registry), within a

period of two weeks from the date of receipt of a copy of this order.

(b) On making such payment and with proof of such payment, the petitioner shall file an appeal before the concerned Appellate Authority within a period of two weeks thereafter.

(c) On filing of such appeal, the Appellate Authority shall consider the same on merits and pass orders in accordance with law without reference to the period of limitation.

Post the matter on 18.12.2018 for reporting compliance. No costs. Connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

mk

To

1. The Commercial Tax Officer.,
Panruti (Rural)Assessment Circle,
Panruti.

2. The Sub Assistant Registrar
Accounts Section
High Court, Madras.

3. The Section Officer,
Writ Section, High Court, Madras.
(Post the matter on 18/12/2018 for reporting compliance)

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.83014
+1cc to the Government Pleader(Taxes), S.R.No.83686

W.P.No.32061 of 2018

rrs 06/12/2018