IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

Writ Petition No.7154 of 2019
& W.M.P.No.7876 of 2019

M/s. Tamil Agencies, Rep. by its Proprietrix, S.Alli,
T.B.Hospital Main Road,
M.Puthur, Cuddalore 607 004 .. Petitioner

vs.

1. The Appellate Deputy Commissioner (CT),
Cuddalore 607 001

2. The Commercial Tax Officer,
Cuddalore Town Assessment Circle,
Cuddalore 607 001 .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records pertaining to the proceedings in A/203/2018 of the order dated 24.09.2018 passed by the second respondent, quash the same and consequently direct the second respondent to take the appeal filed by the petitioner on file and to dispose the same on merits.

For Petitioner : Mr. J.Rajmohan

For Respondents : Mr. V.Haribabu, AGP (Taxes).

O R D E R

Mr.V.Haribabu, learned Additional Government Pleader (Taxes), takes notice for the respondents.

2. Heard Mr.J.Rajmohan, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes), for the respondents. This writ petition is taken up for final disposal, by express consent of both the learned counsel, at the admission stage itself.

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3. The writ petitioner seeks a writ of certiorarified mandamus calling for the order dated 24.09.2018 passed by the Commercial Tax Officer, Cuddalore, quashing of the same and for a direction to the second respondent to take the Appeal filed by the petitioner on file and dispose the same on merits.

4. The petitioner is an Assessee on the file of the second respondent / Assessing Officer. An assessment under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') was made on 31.07.2017 for the period 2016-17. As per the order of assessment, a balance demand of a sum of Rs.77,573/- and penalty at 150% of Rs.1,16,360/- were payable by the petitioner.

5. According to the learned counsel for the petitioner, the order of assessment appears to have been misplaced and an affidavit of the Accountant of the petitioner, Mr. S.Ganapathy Subramaniam, dated 28.03.2019 has been filed to this effect.

6. The Appeal filed challenging the assessment dated 31.07.2017 along with a certified copy of the order of assessment was returned by the first appellate authority, vide the impugned order. It is as against the same, that the present writ petition has been filed.

7. Mr.V.Haribabu, learned Additional Government Pleader (Taxes) who has taken notice for the respondents does not raise any serious objection to the admissing affidavit of the accountant, dated 28.03.2019 or the contents thereof to the effect that the original order of assessment dated 31.07.2017 was handed over to him and has been misplaced in his office.

8. In the aforesaid circumstances and in the interests of justice, I am inclined to direct the first respondent to take the Appeal on file with the certified copy of the order as filed by the petitioner.

9. What remains is the delay in approaching this Court, seeing as the impugned order has been passed on 24.09.2018.

10. When the matter has come up earlier, this Court had imposed a condition that since the writ petition was suffering from laches, it will be taken up for consideration, subject to the petitioner paying the entire balance tax. Today Mr.V.Haribabu confirms that the balance of tax of a sum of Rs.77,573/- has been remitted by the petitioner upon written instructions in this regard from the Assessing Officer.

11. In the light of the aforesaid, this writ petition is allowed. The appeal of the petitioner dated 07.02.2018 shall be

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re-presented before the Registry of the first respondent within a period of one week from today and shall be taken on file by the Registry / Office of the first respondent, without further reference to: (i) limitation; (ii) pre-deposit; and (iii) original order copy and disposed of, after hearing the petitioner, in accordance with law. No costs. Consequently, the connected WMP is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

srk
To
1. The Appellate Deputy Commissioner (CT),
Cuddalore 607 001

2. The Commercial Tax Officer,
Cuddalore Town Assessment Circle,
Cuddalore 607 001

+1 CC to Mr.J.Rajmohan, Advocate sr 34424.
+1 CC to Spl. Govt. Pleader (T) sr 35952.

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MR(CO)
SP(13/05/2019)

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