IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 30705 of 2016
and
W.M.P. No. 26602 of 2016

P.M. Govindaraji ... Petitioner

Vs

1. The Assistant Commissioner (C.T)
   Commercial Taxes Department,
   Dharmapuri - 636 703.
   Tamil Nadu.

2. The Commercial Tax Officer (Enforcement),
   Kangeyam, Tamil Nadu. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the First Respondent pertaining to distraint order dated 12.06.2015 for recovery by attachment and auction sale of tax dues with penalty as contained in corresponding penalty notices dated 28.03.2014, Revision Notices dated 10.10.2013 and 20.03.2014 and quash the same and consequently directing the Respondents to drop the levy of penalty and tax recovery on non-existent wastages under Section 27(4) of TNVAT Act, 2006.

For Petitioner : Mr. N. Seshadri

For Respondents : Mr. A.N.R. Jayaprathap
Government Advocate

ORDER

The Petitioner has filed this Writ Petition praying for the issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the First Respondent pertaining to distraint order dated 12.06.2015 for recovery by attachment and auction sale of tax dues with penalty as contained in corresponding penalty notices dated 28.03.2014, Revision Notices dated 10.10.2013 and 20.03.2014 and quash the same and consequently direct the Respondents to drop the levy of penalty and tax recovery on non-existent wastages under Section 27(4) of TNVAT Act, 2006.

2. It is noticed that the Petitioner has not preferred any appeal against the Assessment Orders for which tax has been admitted vide impugned distraint notice for the Assessment Years 2009-2010, 2010-2011, 2011-2012 and 2012-2013. Since, this Court finds considerable force in the submission of the learned counsel for the Petitioner on merits insofar as the demand under Section 19(9) of the Tamil Nadu Value Added Tax Act, 2006 (in short the TNVAT Act, 2006), I am inclined to close this Writ Petition giving liberty to the Petitioner to file a statutory appeal before the Appellate Deputy Commissioner in terms of Section 51 of the TNVAT Act, 2006 within a period of thirty days from the date of receipt of a copy of this order. Till such time, there shall be no recovery proceedings.

3. It is needless to say while following the order, the Petitioner shall pre-deposit 25% of tax along with the appeal. If such pre-deposit is made along with the appeal before the Appellate Deputy Commissioner, the Appellate Deputy Commissioner is requested to pass appropriate orders in accordance with law.

4. This Writ Petition stands disposed of with the above observations while considering the statutory appeal, the learned Appellate Deputy Commissioner is directed to ignore the delay in filing the appeal. No costs. Consequently, connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb
To

1. The Assistant Commissioner (C.T)
Commercial Taxes Department,
Dharmapuri - 636 703.
Tamil Nadu.

2. The Commercial Tax Officer (Enforcement),
Kangeyam, Tamil Nadu.

W.P. No. 30705 of 2016
and
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CB(05/03/2020)