IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.15829 of 2020 and
WMP.Nos.19674 to 19676 of 2020

Tvl.Rabbany Elelctricals
Represented by its Partner r. Syed
KajaMoeenudeen No. 22 Tindivanam Road
Gingee Villupuram District ...Petitioner

Vs

1. The Appellate Deputy Commissioner (ST)
Cuddalore Commercial Taxes
Building Sub Jail Road Manjakkuppam
Cuddalore.

2. The State Tax Officer
Gingee Assessment Circle Gingee
Villupuram, District ...Respondents

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to Writ of Certiorarified mandamus calling for the records on the file of the 1st Respondent in its impugned proceedings made in A1 / 76 / 2020 dated 11.02.2020 and quash the same as illegal arbitrary and against the principles of natural justice and consequently to direct the 1st Respondent to admit the appeal memorandum dated 30.01.2020 filed by the petitioner and decide the same on merits.

For Petitioner : Mr.J.Prasanna Kumar
For Respondents : Mr.R.Swarnavel
Government Advocate

O R D E R

The petitioner challenges order dated 11.02.2020 passed by the Appellate Deputy Commissioner (R1) returning the appeal filed by the petitioner challenging an order of assessment dated 14.02.2018, passed in terms of the Tamil Nadu Value Added Tax Act, 2006 (in short ‘Act’). The appeal has been returned on the ground that the same is beyond the period of limitation stipulated and is hence not maintainable.

2. Admittedly, the appeal has been filed beyond the period of limitation provided under Section 51(1) of the Act. The condition in regard to the pre-deposit has been more than complied with in so far as 100% of the disputed tax was remitted by the petitioner/assessee at the time of filing of appeal.

3. As far as the delay is concerned, the petitioner had challenged the order of assessment dated 14.02.2018 in W.P.No.24329 of 2019, which writ petition came to be disposed on 22.08.2019 granting liberty to the petitioner to pursue alternate remedy. No specific time limit was set by this Court for filing of the appeal. The order of this Court was made ready and received by the petitioner on 27.12.2019. The statutory appeal was forwarded by registered speed post on 28.01.2020 and received by R1 on 30.01.2020. Thus, if one were to proceed on the basis that the petitioner were permitted to challenge the order of assessment within 30 days from date of receipt of the earlier order of this Court, then the appeal would be delayed by a day. These dates are not in dispute.

4. When the matter had come up for admission on 04.11.2020, the petitioner was put to terms and directed to pay 50% of the penalty, upon remittance of which further orders were to be considered. The aforesaid direction has been complied with as conveyed under memo dated 17.11.2020. Learned Government Advocate appearing for the revenue also confirms this position

5. The sequence of circumstances set out above do not indicate to me that the petitioner had wantonly delayed proceedings and I am thus of the opinion that the petitioner's appeal may be directed to be heard by R1 on merits, once re-presented. This is for the reason that the delay in question is only a day, the petitioner has remitted 100% of the disputed tax and has, in addition, also paid 50% of the penalty imposed. Mr.Swarnavel also does not, fairly, express any objection to the appeal of the petitioner being restored to the file of R1 for adjudication on merits.

6. In the light of the aforesaid discussion, this writ petition is allowed. The petitioner is permitted to re-present the appeal to the registry of R1 within a period of two (2)

weeks from today and upon re-presentation of the same, the appeal shall be admitted and heard on merits and in accordance with law as expeditiously as possible. Connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Ska/sl

To

1. The Appellate Deputy Commissioner (ST)
   Cuddalore Commercial Taxes
   Building Sub Jail Road Manjakkuppam
   Cuddalore

2. The State Tax Officer
   Gingee Assessment Circle Gingee
   Villupuram, District

+1cc to M/s.J.Prasanna Kumar, Advocate, S.R.No.37715

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VSN II (CO)
KKV/30/11/2020