IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.18185, 18189, 18198, 18205, 18209, 18214 & 18219 of 2020
&
WMP.Nos.22592, 22593, 22594, 22604, 22605, 22608, 22609, 22613, 22614, 22616, 22621, 22617 & 22620 of 2020

WP.No.18185 of 2020

M/s.M/s.P.S.Zahoor Ahmed and Co.
rep. by its Prop.P.S.Zahoor Ahmed
S.No. 498/11 V.Kota Road,
Pernambut, Vellore District.

…Petitioner in all WPs

Vs

1.The Appellate Deputy Commissioner (CT) Vellore,
Commercial Taxes Buildings,
No.4, Bharathiar Salai,
Vellore.
2.The Commercial Tax Officer (Main),
Gudiyatham (West) Assessment Circle,
Gudiyatham, now designated as
The State Tax Officer,
Gudiyatham (West).

…Respondents in all WPs

Prayer: Writ Petitions are filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus

W.P.No.18185 of 2020:

to call for the records of the First Respondent in his proceedings in Mis. Pet. No.28/2020 (VAT) dated 05.11.2020 and quash the same as illegal and direct the First Respondent to entertain the appeal filed by the Petitioner for the Assessment year 2010-2011 under TNVAT Act and decide it on merits in accordance with law.

WP No.18189 of 2020;

calling for the records of the first respondent in his proceedings in Mis.Pet.No.29/2020(VAT) dated 5.11.2020 and quash the same as illegal and direct the first respondent to entertain the appeal filed by the petitioner for the assessment year 2011-2012 under TNVAT Act and decide it on merits in accordance with law.

WP No.18198 of 2020:

calling for the records of the first respondent in his proceedings in Mis.Pet.No.30/2020(VAT) dated 5.11.2020 and quash the same as illegal and direct the first respondent to entertain the appeal filed by the petitioner for the assessment year 2012-2013 under TNVAT Act and decide it on merits in accordance with law.

WP No.18205 of 2020:

calling for the records of the first respondent in his proceedings in Mis.Pet.No.31/2020(VAT) dated 5.11.2020 and quash the same as illegal and direct the first respondent to entertain the appeal filed by the petitioner for the assessment year 2014-2015 under TNVAT Act and decide it on merits in accordance with law.

WP No.18209 of 2020:

calling for the records of the first respondent in his proceedings in Mis.Pet.No.32/2020(CST) dated 5.11.2020 and quash the same as illegal and direct the first respondent to entertain the appeal filed by the petitioner for the assessment year 2009-2010 under CST Act and decide it on merits in accordance with law.

WP No.18214 of 2020:

calling for the records of the first respondent in his proceedings in Mis.Pet.No.33/2020(VAT) dated 5.11.2020 and quash the same as illegal and direct the first respondent to entertain the appeal filed by the petitioner for the assessment year 2010-2011 under CST Act and decide it on merits in accordance with law.

WP No.18219 of 2020:

calling for the records of the first respondent in his proceedings in Mis.Pet.No.34/2020(CST)) dated 5.11.2020 and quash the same as illegal and direct the first respondent to entertain the appeal filed by the petitioner for the assessment year 2013-2014 under CST Act and decide it on merits in accordance with law.

(In all WPs)
For Petitioner : Mr.S.Ramanathan

For Respondents : Mr.Mohd. Shaffiq
Special Government Pleader (T)

COMMON ORDER

The petitioner challenges order dated 05.11.2020 passed by the first respondent returning the statutory appeals on the ground that the appeals are belated. The order relates to seven appeals, four (4) appeals filed in terms of the provisions of Tamil Nadu Value Added Tax Act, 2006 and three (3) appeals in terms of provisions of Central Sales Tax Act, 1956. The orders of assessment (TNVAT) are dated 13.10.2016 for the periods 2010-11, 2011-12 and 2012-13 and 29.01.2016 for the period 2014-15. The orders of assessment (CST) have been passed on various dates i.e., 11.06.2012 for the period 2009-10, 17.05.2013 for the period 2010-11 and 26.04.2016 for the period 2013-14.

2. It is the petitioners' case that none of these orders have been served upon it, since it had changed its place of business and intimated the same to the assessing authority/R2 on 20.06.2012. An extract from the dispatch register maintained by the petitioner would show that this intimation has been duly intimated to an officer of the Commercial Tax Department on 19.06.2012. The signature is a mere scrawl and no name or designation is mentioned therein.

3. According to the petitioner, it was of the view that no orders of assessment have been passed and it was only when coercive recovery proceedings was initiated by way of bank attachment that the petitioner came to know of the orders of assessment. Upon request, certified copies of the orders of assessment were obtained on 24.07.2020. Thereafter, appeals challenging the orders of assessment have been filed on 04.08.2020.

4. R1 rejects the appeals as non-maintainable on the ground that there is no officer in his department whose signature corresponds with the signature in the delivery book. He hence concludes that the change of place of business was not intimated to the department at all.

5. I am unable to appreciate as to how an officer in 2020 could compare and verify a signature dated 20.06.2012 as it is very likely that there had been a wholesale change in the composition of that office in the intervening period of eight years. Thus, I am of the view that, in a matter of this nature, the benefit of doubt should certainly be given to the petitioner. This is particularly so since there is no allegation of malpractice foisted upon the petitioner by the officer nor is such an argument raised before me.

6. The impugned order is hence set aside and directions issued to the first respondent to receive the appeals as maintainable. As far as the TNVAT appeals are concerned, 100% of the disputed taxes are said to have been paid and as far as CST appeals are concerned 25% of the disputed taxes are said to have been paid. There is no dispute on this score. If the appeals are re-presented within a period of two (2) weeks from today, the Registry of R1 shall take the same on file without reference to limitation, to be considered on merits and orders passed as expeditiously as possible.

7. These writ petitions are disposed in the aforesaid terms. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To
1.The Appellate Deputy Commissioner (CT) Vellore,
Commercial Taxes Buildings,
No.4, Bharathiar Salai, Vellore.

2.The Commercial Tax Officer (Main),
Gudiyatham (West) Assessment Circle,
Gudiyatham, now designated as
The State Tax Officer, Gudiyatham (West).

+1cc to the Special Government Pleader Sr.7214
+1cc to M/s.S.Ramanathan, Advocate Sr.6945

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sr II[co]
srg 11/02/2021