BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4975 of 2021
and
W.M.P.(MD)No.4033 of 2021

Tvl. Sri Niraimathi Industries,
Represented by its Proprietor,
V.P.Velusamy ... Petitioner

Vs.

1.Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench),
Commercial Taxes Buildings,
Dr.Thangaraj Salai,
Madurai 625 020.

2.The Commercial Tax Officer-II,
(Now Re-designated at State Tax Officer-II),
Commercial Taxes Buildings,
Tuticorin. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned proceedings passed by the 1st respondent in Madurai Tribunal Miscellaneous Petition No.297/2017 in Madurai Tribunal State Appeal No.91/2015, dated 03.03.2020 and quash the same as arbitrary, invalid and against the Principles of Natural Justice and also to direct the 1st respondent to take up the appeal on file and to dispose of the same on merits as per the provisions of the Tamil Nadu General Sales Tax Act, 1959.

For Petitioner : Mr.A.Satheesh Murugan
For Mr.K.Srinivasan.

For Respondents : Mr.G.Arjunan,
Government Advocate.

ORDER

Heard the learned counsel on either side. With their consent, the writ petition is taken up for final disposal at the admission stage itself.

2.The petitioner had succeeded before the first appellate authority. Questioning the same, the department filed State Appeal before the Tribunal. The writ petitioner's authorised representative was absent on 14.06.2016, leading to passing of an ex-parte order on 06.04.2017. On both dates, the petitioner's authorised representative was absent. Subsequently, M.T.M.P.No.297 of 2017 was filed for setting aside the same. The petitioner in the affidavit had stated that his authorised representative was otherwise engaged on private work and that is why, he could not appear before the Tribunal on 06.04.2017. The Tribunal found that the absence of the authorised representative of the petitioner was not only on 06.04.2017 but also on 14.06.2016. In respect of the absence on 14.06.2016, no reason had been set out. Therefore, the petition for setting aside was dismissed vide order dated 03.03.2020. Questioning the same, this writ petition came to be filed.

3.This Court wanted to know as to why the writ petition has been filed after a gap of almost one year. In the affidavit, the date of receipt of copy of the order has not been mentioned. The postal cover in which, the order copy was dispatched has also not been enclosed in the typed set of papers. But then, the petitioner's counsel would firmly assert before this Court that he is very much having the original postal cover and that it can seen therefrom that the impugned order was received by the petitioner was only on 08.01.2021. I accept the explanation given by the learned counsel for the petitioner.

4.The petitioner had succeeded before the first appellate authority. It is only the Government that had gone State Appeal by filing M.T.S.A.No.91 of 2015. The petitioner deserves to canvass his defence on merits. Therefore, even though I cannot fault the Tribunal for having dismissed the set aside petition, still in the interest of justice, in order to give one more opportunity for the petitioner, the order impugned in the writ petition is set aside.

5.The petitioner's counsel has drawn my attention to the decision reported in AIR 1981 SC 1400 (Rafiq and Another Vs. Munshilal and Another), in which the Hon'ble Supreme Court had held that for the omission of the part of the counsel, the litigant ought not to suffer. In the case on hand, the petitioner's authorised representative for the reasons best known to him had absented himself. The writ petitioner does not deserve to suffer for the mistake committed by his authorised representative. It is for this reason, even though the affidavit filed by the petitioner leaves much to be desired, I am interfering with the impugned order passed by the Tribunal.

6.However, the petitioner has to pay the costs to the department. Therefore, the petitioner's counsel states that the petitioner will remit a sum of Rs.2,000/- (Rupees Two Thousand Only) to the second respondent within a period of four weeks from the date of receipt of a copy of this order.

7.Recording the undertaking of the petitioner to remit cost to the second respondent as mentioned above, the impugned order is quashed. The writ petition is allowed. The first respondent/Tribunal shall hear M.T.S.A.No.91 of 2015 and pass order on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench),
Commercial Taxes Buildings,
Dr.Thangaraj Salai,
Madurai 625 020.

2.The Commercial Tax Officer-II,
(Now Re-designated at State Tax Officer-II),
Commercial Taxes Buildings,
Tuticorin.

+1 CC to M/s.SPL GP (SR-10142[F] dated 10/03/2021)

+1 CC to M/s.K.SRINIVASAN, Advocate (SR-10231[F] dated 11/03/2021)

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RK (26.04.2021) 3P 5C