IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.04.2022
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.8873 of 2022
And
W.M.P.Nos.8708 and 8709 of 2022

M/s.Bewo Technologies (P) Ltd.,
Rep. by its Agent,
R.Sampathkumar ... Petitioner

Vs.

1.The Additional Commissioner (ST)
O/o.The Principal Secretary,
Commissioner of Commercial Taxes,
Chepauk,
Chennai - 600 005.

2.The Joint Commissioner (ST)
Chennai (North) Division,
III Floor, PAPJM Building,
No.1, Greams Road,
Chennai - 600 006.

3.The Deputy Commercial Tax Officer,
Enforcement (North), PAPJM Building,
No.1, Greams Road,
Chennai - 600 006.

4.The Commercial Tax Officer,
K.K.Nagar Assessment Circle,
Chennai. ... Respondents

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in Dated 10.09.2020, quash the same and further direct the respondents to refund the amount of the compounding fee of Rs.4,44,191/-.

For Petitioner : Mr.M.Jothi Kumar
For Respondents : Mr.C.Harishraj
Additional Government Pleader (Taxes)

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent in dated 10.09.2020, quash the same and to further direct the respondents to refund the amount of the compounding fee of Rs.4,44,191/-.

2.The case of the petitioner is that the petitioner was the registered dealer on the file of the fourth respondent under the erstwhile repealed Tamil Nadu Value Added Tax Act, 2006 [hereinafter referred to as 'Act']. The petitioner was carrying on business in retail aggregation goods from 2012 -13 to 2015 - 16 and monthly returns were filed. The returns were self assessed and deemed to have been accepted. There was no inspection or fault found with the records maintained by the petitioner nor there was any revision of assessment of the earlier period.

3.The further case of the petitioner is that the petitioner with an intention to start a new venture, so as to modernise the billing system applied in retail / grocery stores, imported 'BeWo Tower Pos Device BTP - 2000' - 275 pieces as a 'test check' to be installed in various retail / grocery stores and orders were placed with Penteng Electronics Company Limited, Hong Kong vide invoice dated 14.04.2016. The goods after imports were stored in customs freight station and upon payment of customs duty, it was cleared from the customs freight station and taken to No.4/81, Kalaimagal Nagar, II Main Road, Ekkattuthangal vide Form KK and the movement of the goods were accompanied by import documents apart from Form KK.

4.The further case of the petitioner is that under the Act, there is no separate registration required for ware house or place of storage, however, the Act contemplates registration for additional place of business. The petitioner applied for permission by application disclosing the address as additional place of business and the same was acknowledged by the Commercial Tax Department and the additional place of business was registered with effect from 30.05.2016. Whileso the third respondent detained the goods on 25.05.2016 for the reason that goods were taken to the un-registered place of business.

5.The further case of the petitioner is that the goods were released on 27.05.2016 after payment of the compounding fee of Rs.4,44,191/- and taken to the storage place of the petitioner and those goods have not yet been sold. As against the order collecting compounding fee, the petitioner preferred revision before the second respondent and the said revision was dismissed on 11.03.2019. Challenging the same, the petitioner preferred further revision before the first respondent, however, the impugned notice was issued returning the revision papers on the ground that the revision was filed after lapse of time limit prescribed under the Act. Hence, this writ petition.

6.The learned counsel appearing for the petitioner submitted that the petitioner filed second revision before the first respondent in terms of Section 57 of the Act, challenging the order of the second respondent dated 11.03.2019. Though the first respondent has no power to condone the delay in filing the second revision, inorder to render substantial justice, the first respondent ought to have condoned the delay, entertained the revision and passed orders on merits, however, such discretionary power was not exercised by the first respondent and the revision papers were returned to the petitioner, which is not sustainable one.

7.The learned Additional Government Pleader (Taxes) appearing for the respondents submitted that the petitioner preferred second revision before the first respondent in terms of Section 57 of the Act, challenging the order of the second respondent dated 11.03.2019. Since the first respondent has no power to condone the delay in filing the second revision, the first respondent returned the revision papers to the petitioner on 10.09.2020, however, the present writ petition has been filed for the aforesaid relief after a lapse of two years and the reason for the delay in filing this writ petition has not been explained by the petitioner. Hence, this writ petition is liable to be dismissed on the ground of delay and latches.

8.Heard the arguments advanced on either side and perused the materials available on record.

9.The facts in the present case is not in dispute. Admittedly, the third respondent detained the petitioner's goods on 25.05.2016 for the reason that goods were taken to the un-registered place of business and the goods were released on 27.05.2016 after payment of the compounding fee of Rs.4,44,191/-. As against the order of the third respondent collecting compounding fee, the petitioner preferred revision before the second respondent and the said revision was dismissed on 11.03.2019. Challenging the said order, the petitioner preferred second revision beyond the period of limitation before the first respondent in terms of Section 57 of the Act. Since the first respondent has no power to condone the delay in filing the second revision, the first respondent issued the impugned notice dated 10.09.2020 and returned the revision papers to the petitioner.

10.However, this writ petition has been filed after a lapse of two years and the reason for the delay in filing this writ petition has not been explained by the petitioner. Hence, this writ petition suffer on the ground of delay and latches.

11.The writ petition is accordingly dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

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+1 cc to Spl Government Pleader Sr.NO. 24972

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mg(CO)
A.SK(22/04/2022)