BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.9658 of 2021
and
W.M.P(MD)No.7405 of 2021

T.Manickam ... Petitioner

Vs.

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

2.The Commercial Tax Officer,
West Veli Street Assessment Circle,
Commercial Taxes Comples,
Dr.Thangaraj Salai,
Madurai-625 020. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order of the 1st Respondent in MTMP No. 69/2018 in MTSA No.359/2008 dated 06.03.2020, quash the same and consequently direct the 1st Respondent to hear the state appeal in MTSA No. 359/2008.

For Petitioner :Mr.B.Rooban
For Respondents :Mr.M.Prakash
Additional Government Pleader

ORDER

This writ petition is filed challenging the order of the Tribunal rejecting the petitioner's application for restoring the appeal, which was decided ex-parte on 06.02.2018.

2.It is submitted by the learned counsel for the petitioner that the reasons for the absence on 06.02.2018 is only in view of the fact that the petitioner was suffering from jaundice. It is however submitted that the same was not even dealt with by the Tribunal, while dismissing the application to set aside the ex-parte order, instead the Tribunal, on perusal of the case Dairy, allegedly found that the main appeal was filed in the year 2018 and there has been repeated adjournments being taken and finally the petitioner was set ex-parte on 22.11.2017 and final order came to be passed on 06.02.2018. It was found by the Tribunal that the petitioner was not serious and accordingly rejected the restoration petition. It is submitted that the reason for absence, as stated above, is only in the view of the fact that the petitioner was suffering from jaundice. It is observed in the order that the Tribunal has given 42 adjournments out of which the case has been adjourned on 22 occasions in view of non-availablity of the Member (want of Coram), on 12 occasions at the request of Additional State Representative and the remaining adjournments were at the request of the petitioner. It was thus submitted that the Tribunal has misdirected itself by proceeding on the basis that the petitioner had sought for adjournments in 42 occasions, which is factually incorrect. It was, submitted that the absense was only in view of the medical ailments, namely, jaundice. This Court finds that the rejection for restoration is an gross misdirection to the facts of the present case and thus liable to be set aside.

3.In view of the above, the impugned order dated 06.03.2020, is set aside. The Tribunal is directed to rehear the petition for restoration and pass orders thereon. If the tribunal on hearing the petition, restores the appeal, it shall proceed to dispose the appeal in accordance with law.

4.Accordingly, this writ petition stands disposed of, on the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

22.11.2022

Index : Yes / No
Speaking Order : Yes / No
sbn

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MOHAMMED SHAFFIQ, J.

sbn

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