BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.25573 of 2022
and
W.M.P(MD).Nos.19655 and 19657 of 2022

M/s.Eraiyarul Construction
Material Trading Private Limited,
Represented by its Managing Director,
Mr.S.Ashiq Hameed,
92, Bye-pass Road,
Tiruvarur-610001. ... Petitioner

Vs.

Appellate Deputy Commissioner (CT),
Thanjavur,
Camp at Thanjavur,
20/3, Commercial Tax Building,
Sachithananda Muppparanar Road,
Thanjavur-613 001. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the Respondent and quash the impugned order in N.A.K.A.343/2022/A1, dated 15.07.2022 passed under Section 51(3) of the Tamil Nadu Value Added Tax Act, 2006 by the Respondent as illegal and not in accordance with law and consequently, direct the Respondent to number the Petitioner's appeal and consider the same on merits and in accordance with law.

For Petitioner : Mr.R.Sivaraman
For Respondent : Mr.M.Prakash
Additional Government Pleader

ORDER

The writ petition is filed challenging the rejection/return of the appeal papers on the premise that the Petitioner has failed to make the pre-deposit of 25% of tax amount on or before 30.05.2022, i.e., beyond the statutory period of limitation for filing an appeal, instead, it was paid only on 04.07.2022.

2. It is submitted by the learned counsel for the Petitioner that the Hon'ble Supreme Court in *Suo motu* Writ Petition (C) No.3 of 2020 had extended time until 31.05.2022 in respect of which the limitation would expire between 15.03.2020 and 28.02.2022. In any view, it is submitted that appeal having been filed in time, its rejection only on the ground that 25% pre-deposit of tax amount has been filed beyond the time limit for filing appeal is un-sustainable. In this regard, reliance was sought to be placed on the judgment of the Hon'ble Supreme Court in the case of ***M/s.Ranjit Impex Vs. Appellate Deputy Commissioner and another*** reported in ***(2013) 10 SCC 655***. Relevant portion reads as under:

> *"**3.** In the writ appeal, it was contended that the appellate authority could not have returned the memorandum of appeal on the ground that Section 51 uses the term "entertain" and*

second, the amount that was due to the appellant from the Department was to be adjusted for the purpose of deposit as envisaged under Section 51 of the Act. The Division Bench came to hold that the proof of deposit of tax has to be produced at the time when the appeal is taken for consideration but not at the time of presentation of the appeal. As far as issue of adjustment is concerned, it is objected that the amount had properly been adjusted.

***4.** As far as the first issue is concerned, it is needless to say that the conclusion arrived at by the Division Bench is absolutely justified, for a condition to entertain an appeal does not mean that the memorandum of appeal shall be returned because of such non-compliance pertaining to pre-deposit. The only consequence is that the appeal shall not be entertained which means the appeal shall not be considered on merits and eventually has to be dismissed on that ground."*

3. It is submitted by the learned counsel for the Petitioner that payment of Pre-deposit of 25% of tax amount has been complied with, as would be evident from the impugned proceedings, which only rejects the appeal on the ground that there has been delay in payment of disputed tax. It is submitted that difference in payment of pre-deposit of 25% of tax was only in view of the lack of clarity as to the amount due in terms of assessment order. A perusal of the assessment order shows that the balance of tax as is shown as

Rs.6,01,306/-. With regard to a sum of Rs.1,30,158/-, there is no demand, the assessment order provides for reversal of input tax credit. It is submitted that the Petitioner was under the bonafide impression that 25% pre-deposit mandated under the Tamil Nadu Value Added Tax Act for filing an appeal was only in respect of the balance of tax shown as Rs.6,01,306/-, and would not include Rs.1,30,158/- which represents reversal of Input Tax Credit in terms of the order of assessment for the purpose of calculating the pre-deposit of 25%. It was submitted that the delay in payment of of pre-deposit was only in view of the above bonafide mistake on part of the Petitioner.

4. This Court finds that the mistake was bonafide. The impugned order rejecting the appeal taking away the valuable right of appeal of the Petitioner for the above bonafide mistake may not be warranted. Further, the Petitioner having paid 25% pre-deposit applying the judgment Hon'ble Supreme Court to the facts of the case, it appears that the appellate authority may not be justified in rejecting the appeal. In view of the same, the impugned order, dated 15.07.2022 is set aside and the appellate authority is directed to entertain the appeal.

5. With the above direction, the writ petitions stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

10.11.2022

Index : Yes / No
Internet : Yes/ No
sn

To

The Appellate Deputy Commissioner (CT),
Thanjavur,
Camp at Thanjavur,
20/3, Commercial Tax Building,
Sachithananda Muppparanar Road,
Thanjavur-613 001.

MOHAMMED SHAFFIQ, J.

sn

W.P(MD).No.25573 of 2022

10.11.2022