BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.10369 of 2023

A.Venseslas
Ex Partner of M/s.Bharath Marbles,
(Defunct Company),
15, Bharathar North Street,
Pettai, Tirunelveli. ... Petitioner

Vs.

1.The Appellate Deputy Commissioner (CT),
Commercial Taxes Buildings,
Tirunelveli.

2.The Assistant Commissioner (CT),
Palayamkottai Assessment Circle,
Commercial Tax Buildings,
Tirunelveli. ... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records in Na.Ka.A1/153/2023 dated 01.03.2023 passed by the first respondent and quash the same as arbitrary and illegal and direct the first respondent to entertain the appeal and decide the same on merits.

For Petitioner : Mr.S.Karunakar

For Respondents : Mr.T.Amjadkhan
Government Advocate

ORDER

This writ petition is filed for issuance of Writ of Certiorarified Mandamus to call for the records in Na.Ka.A1/153/2023 dated 01.03.2023 passed by the first respondent and quash the same as arbitrary and illegal and consequently, direct the first respondent to entertain the appeal and decide the same on merits.

2. The petitioner would submit that against the assessment order dated 15.11.2012 passed by the second respondent, the petitioner had preferred an appeal before the first respondent after paying the pre-deposit as contemplated under TNGST Act, 1956 through their Sale Tax Practitioner, namely, P.Nagarajan. The petitioner whereunder bona-fidely believed that the matter had been settled before the first respondent. Thereafter, the petitioner's company had been closed due to financial crisis and the partners were not in a position to follow the case,

due to their indigent circumstances. The petitioner would further submit that he was the person, who was looking after these proceedings and was under the bona- fide believe that the same would be settled in the light of the appeal filed. However, when the second respondent insisted upon to pay payment of arrears of particular period, they had approached the family of P.Nagarajan, who by then had expired. They were unable to get the details from the said Nagarajan's family. Thereafter, they had made enquiry, where they came to know that the appeal had been returned for deficit payment of the pre-deposit, which is 25% of the disputed tax.

3. The petitioner would further submit that with very great difficulty, they had managed to trace out the appeal papers from the family of the Nagarajan and thereafter, the same was represented with the deficit payment of 25% of the disputed tax totaling a sum of Rs.72,680/-. The first respondent once again returned the papers vide order dated 01.03.2023 by stating that 25% amount has been paid belatedly, that too, after 10 years. Therefore, the petitioner is before this Court, since there was no provision under the Act to condone the delay.

4. Heard the learned counsel appearing on either side.

5. It is not the case of the respondents that the petitioner has not paid 25% of the mandatory deposit. Their contention is that it has been paid belatedly. It is no doubt true that there is a limitation prescribed under the TNGST Act, but however there is no bar specifically excluding the provisions of the Limitation Act. Therefore, this Court exercising its jurisdictional power under Article 226 of the Constitution of India, allows this Writ Petition by setting aside the impugned order dated 01.03.2023 passed by the first respondent and issues a mandamus to the respondents to number the appeal, if it is otherwise in order and dispose of the same within a period of one month from the date of numbering the appeal. No costs.

28.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
cp

To

1.The Appellate Deputy Commissioner (CT),
Commercial Taxes Buildings,
Tirunelveli.

2.The Assistant Commissioner (CT),
Palayamkottai Assessment Circle,
Commercial Tax Buildings,
Tirunelveli.

P.T.ASHA, J.

cp

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