IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 03.07.2025**

CORAM

**THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY**

**W.P No.6545 of 2023**

Tvl.Siva Engineering Company
Rep by its Managing Partner
No.699/2, R.Muthusamy & Brothers
Industrial Complex,
Palladam Road,
Tiruppur- 641 604. Petitioner

..Vs..

Deputy Commissioner (Appeals)
Office of the Commercial Tax Department
No.1, Brough Road,
Erode- 638 001. Respondent

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to impugned order passed by the Respondent in proceedings no.Na/Ka/1004/2022/A1 dated 25.01.2023 and quash the same and direct the Respondent to entertain the Appeal filed by the Petitioner on merits.

For Petitioner: Mr.A.Maheshnath

For Respondent: Mr.V.Prashanth Kiran
Government Advocate (Taxes)

**ORDER**

The challenge in this writ petition is to the order dated 25.01.2023 passed by the respondent and to quash the same and to direct the respondent to entertain the Appeal filed by the petitioner on merits.

2. The learned counsel for the petitioner submits that the assessment order was passed against the petitioner on 07.10.2022 and the same was received by the petitioner on 13.10.2022. Subsequently, the petitioner filed an appeal as against the aforesaid assessment order on 11.11.2022 and the same is within the period of limitation. But, due to financial hardship, the petitioner was unable to make pre-deposit of 25% of disputed liability at the time of filing Appeal. Subsequently, the respondent rejected the appeal on the ground that there is no proof of payment of admitted and disputed liability.

3. Further, he would submit that omission of non filing of proof of

payment for the assessment year 2017-2018 was neither wilful nor wanton. That apart the petitioner was under the bonafide impression that the appeal will be returned for the want of proof of payment. But the respondent without doing so has passed the impugned order rejecting the appeal filed by the petitioner. He further submitted that the petitioner received the impugned order on 03.02.2023 and paid the disputed liability at 25% on 28.01.2023 before receiving the impugned order. He therefore prays to set aside the impugned order direct the respondent to entertain the Appeal filed by the petitioner on merits.

4. The learned Government Advocate (Taxes) appearing for the Respondent submitted that since the petitioner has not filed proof for payment of 25% of disputed tax liability, the appeal came to be rejected.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Taxes) for the Respondent and also perused the materials available on record.

6. In the case on hand, the petitioner has filed the appeal within the prescribed time limit, but failed to pay 25% of the disputed tax liability along with appeal due to financial constraint, however, the petitioner paid the same on 28.01.2023 i.e., three days within the passing of impugned order and before the receipt of the impugned order by the petitioner.

7. In such view of the matter, this Court is inclined to set aside the impugned order dated 25.01.2023. Accordingly, this Court passes the following order:-

(i) The impugned order dated 25.01.2023 is set aside and the matter is remanded to the Respondent for fresh consideration.

(ii) The respondent is directed to take the appeal on record and pass orders on merits and in accordance with law, as expeditiously as possible after affording an opportunity of hearing to the petitioner.

8. At this juncture, the learned counsel for the petitioner would submit that the respondent has initiated the recovery proceedings.

9. It is made clear that once the pre-deposit is made, the question of recovery will not arise. The respondent shall not initiate any recovery proceedings, once the appeal is filed, till the disposal of the appeal.

10. Accordingly, the writ petition is disposed of. There is no order as to costs.

**03.07.2025**

arr

To

Deputy Commissioner (Appeals)
Office of the Commercial Tax
Department
No.1, Brough Road,
Erode- 638 001.

**KRISHNAN RAMASAMY, J.**

arr

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