IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.3.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.6896 to 6899 of 2015

Mahesh Kumar, V.K.,
Prop.Gunasundar Enterprises
D/No.MMCX/249
Near Registrar Office
Chokli, Mahe
Union Territory of Puducherry ... Petitioner in all WPs

.Vs.

The Appellate Assistant Commissioner
Commercial Taxes Department
Government of Puducherry
Puducherry. ... Respondent in all WPs

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of mandamus directing the respondent to admit the appeal by condoning the bonafide delay period from August 2012 to March 2013; from March 2014; April 2013 to July 2013 and from August 2013 to December 2013 respectively.

For Petitioner : Mr.P.Suresh

For Respondent : Mr.A.Tamilvanan
Government Advocate

C O M M O N O R D E R

Heard, Mr.P.Suresh, learned Counsel appearing for the petitioner, Mr.A.Tamilvanan, learned Government Advocate (Pondicherry) and perused the materials available on record.

2. Writ petitions have been filed for a mandamus directing the respondent to admit the appeal by condoning the delay period from August 2012 to March 2013; from March 2014; from April 2013 to July 2013 and from August 2013 to December 2013 respectively.

3. The petitioner is a wholesale dealer in live chicken. The respondent completed the assessment and issued assessment order

dated 26.11.2013 which was received by the petitioner on the same day. The petitioner, after receiving the assessment order dated 26.11.2013, preferred Appeal before the Appellate Assistant Commissioner with a delay of 351 days. The said appeal was rejected by Appeal Memorandum dated 18.12.2014 on the ground that as per the provision of Section 47(1) of the Pondicherry Value Added Tax Act, 2007, the appeal ought to have been filed within a period of 30 days from the date on which the assessment order was served. According to the petitioner, the appellate authority is entitled to condone further period of 30 days. In short, the assessee is entitled to prefer an appeal within a total period of 60 days from the date of receipt of the assessment order. Since the appeal preferred by the petitioner was rejected, he is before this Court.

4. The learned counsel for the petitioner submitted that the appeal preferred by the petitioner was returned by the Appellate Assistant Commissioner by Memorandum dated 18.12.2014 on the ground that they have no jurisdiction to entertain the appeal beyond the period of 60 days from the date on which the order was served. The learned counsel for the petitioner by placing reliance on the decision of this Court in Royal Insulation (P) Ltd. vs. Commercial Tax Officer, Manali Assessment Circle, Chennai [(2006) 147 STC 246 (Mad) contended that this Court has entertained the writ petition and directed the authority to take up the matter. The issue in that case was not with regard to the condonation of delay. The relevant paragraph of the decision in the said case is extracted below:-

> In our opinion, there should be such a provision permitting waiver or stay of the pre-deposit amount by the appellate authority in appropriate and genuine cases because there may be cases where the assessee may not be able to deposit the pre-deposit amount for genuine reasons, or there may be a very glaring mistake in the order, or where waiver or stay should be done for some other good and appropriate reason. There may be cases where a huge demand is arbitrarily made by an assessment order although the assessee can clearly satisfy the appellate authority that he is not liable to pay tax at all, or at a far lower amount. Because of the absence of provision for waiver or stay in Section 31 of the Act many cases are coming up directly by way of writ petition in this Court challenging the assessment order. We are not inclined to entertain such writ petitions because there is alternative remedy by way of appeal. However, the appeal may be rendered illusory in many cases because there is no provision for waiver or stay of the pre-deposit amount even in genuine and appropriate cases.

> Hence we recommend to the State Government to issue an ordinance forthwith amending Section 31 of the Tamil Nadu General Sales Tax Act and making a provision permitting waiver or stay by the appellate authority (in its discretion) of the pre-deposit amount in appropriate and genuine cases so that the assessees may not face hardship, and the alternative remedy of appeal may not become illusory.
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> It may also be pointed out that the second appellate remedy under Section 36 of the Act can only be availed of if the entire tax amount is prepaid vide second proviso (a) to Section 36 of the Act. Hence we recommend that there should be a similar amendment in Section 36 of the Act also.

Since the issue was not with regard to the condonation of delay, the above decision is not applicable to the case on hand.

5. The learned counsel for the petitioner has also relied on the unreported decision of this Court in SELVAN CYCLE AND FAN TRADERS v. DEPUTY COMMERCIAL TAX OFFICER dated 23.7.1993 and pointed out that this Court directed the appellate authority to take up the appeal along with petition to condone the delay and pass composite orders on the appeal as well as on the petition for condoning the delay in accordance with law.

6. In the said judgment, the assessee has preferred appeal after 30 days but before the expiry of the maximum period of 60 days prescribed under the statute. Hence, in that circumstances, this Court entertained the writ petition and directed the authority to take up the matter as the authority is empowered to consider the question of delay, when it is filed within a period of 30 days.

7. In the present case on hand, the appeal has been filed beyond the period of 360 days. Hence the appellate authority has no jurisdiction to entertain the appeal.

8. In the light of the above decisions cited supra, I am of the view that the authority was right in returning the memorandum of appeal filed by the assessee. I find no merit in the writ petitions The writ petitions stand dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Appellate Assistant Commissioner
Commercial Taxes Department
Government of Puducherry
Puducherry.

+8cc's to Mr.P.Suresh, Advocate, S.R.No.14053,14054,14055,14056
+4cc's to the Senior Advocate, Senior Government Pleader - cum - Senior P.P. For Puducherry, S.R.No.14037,14039,14040,14041

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SV(CO)
CA(31/03/2015)