IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.29855 of 2006

M/s.Indian Steel & Allied Products,
represented by its Proprietor
B.S.Garg,
118, T.H. Road,
Chennai 600 081. ... Petitioner

Vs

1. The Deputy Commercial Tax Officer (Addl.)
   Tondiarpet Assessment Circle,
   Kuralagam Annexe, IV Floor,
   Chennai 600 108.

2. The Appellate Assistant Commissioner (CT) II,
   Kuralagam Annexe, VI Floor, Chennai 600 108.

3. The State of Tamilnadu,
   represented by the Deputy Commissioner (CT)
   Chennai (East Division)
   Greams Road, Chennai 600 006.

4. The Secretary,
   Tamilnadu Sales Tax Appellate Tribunal,
   (Addl. Bench), City Civil Court Building,
   II Floor, Chennai 600 108. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorari to call for the records on the file of the third respondent in S.T.M.P.No.332/2001 and quash the same as illegal and against the law laid down by Madras High Court in the case of Arihant Electrical and Refrigeration Centre reported in 11 TNCTJ 79.

For Petitioner : Mr. T. Pramodkumar Chopda

For Respondent : Mr.S.Manoharan Sundaram,
Additional Government Pleader

ORDER

Heard the learned counsel for the petitioner and Mr. S.Manoharan Sundaram, learned Additional Government Pleader.

2. The petitioner, who is a re-roller of iron and steel products, is a registered dealer on the file of first respondent under TNGST Act and CST Act. The first respondent in his proceedings made in CST.9574/93-94 dated 26.2.1999 disallowed the petitioner's claim of exemption on consignment transfer made during the assessment year 1993-94, thereby levied tax and maximum penalty. Against the said order, the petitioner filed appeal in A.P.No.CST.47/99 before the second respondent, who partly allowed and partly dismissed the said appeal on 17.12.1999. Aggrieved against the same, the 3rd respondent filed an appeal before the Sales Tax Appellate Tribunal, who is the 4th respondent herein. Since the appeal was filed with a delay, the 3rd respondent filed a petition for condonation of delay by computing the delay of 119 days in filing the appeal from the date of receipt of the order by himself instead of the first respondent or his authorised representative viz., the Departmental representative (CT) II, who received notice and appeared before the 2nd respondent on behalf of the first respondent.

3. The petitioner filed counter affidavit to condonation petition stating that the appeal order was served to the first respondent on 16.2.2000 and to the Departmental representative (CT)II on 18.2.2000 and hence taking into consideration, the date of service of the order on the first respondent or his authorised representative, the appeal ought to have been filed within a period of 120 days, but the appeal was filed only on 27.10.2000 with a delay of 134 days or 132 days, but not 119 days as stated by the 3rd respondent in its condonation delay petition and thus the appeal was filed over and above the appeal period of 120 days.

4. Learned counsel for the petitioner submitted that the third respondent filed appeal on 27.10.2000 with a delay of 134 days or 132 days and therefore the appeal filed by the third respondent is beyond the limitation period of 120 days and hence the appeal filed by the 3rd respondent is barred by limitation. In support of his contention, he also relied on the following decisions rendered by the Honourble Division Bench of this Court;

(i) 2005-06 (11) TNCTJ 79 (M/s. Arihand

Electrical and Refrigeration Centre Vs. The Secretary, Tamilnadu Sales Tax Appellate Tribunal) and

(ii) 136 STC 632 (State of Tamilnadu Vs. R.K. Herbal (P) Ltd and others)

and submitted that condonation petition filed by the 3rd respondent under proviso to Section 36(1) of the TNGST Act is beyond the condonable period of 120 days

5. The learned Additional Government Pleader, on the other hand supported the orders under challenge.

6. The writ Petition has been filed challenging the order passed by the Sales Tax Appellate Tribunal in STMP.No. 332/2001 dated 13.2.2002, wherein, the specific date of service was not specified and the delay was taken into consideration as 119 days. On the other hand, the respondent herein filed a counter, pointing out the actual date of receipt of notice by the departmental representative as 18.2.2000 and if the limitation period is calculated on that particular date, it goes beyond the permissible limit for condonation.

7. It is seen that without considering the counter affidavit, especially, paragraph 8, wherein,the delay in filing the appeal is calculated to the tune of 134 days, the Tribunal passed the order. Furthermore, the Honourable Division Bench of this Court, in the decisions reported in (i) 2005-06 (11) TNCTJ 79 (M/s. Arihand Electrical and Refrigeration Centre Vs. The Secretary, Tamilnadu Sales Tax Appellate Tribunal) and (ii) 136 STC 632 State of Tamilnadu Vs. R.K. Herbal (P) Ltd and others, referring section 36 of TNGST Act has held that the date of service of the order of the Appellate Tribunal to the State's representative as the actual date to be taken into consideration for calculating the period of limitation and if that is being taken into consideration, it is apparent that the filing of appeal is beyond the condonable period and hence, the impugned order in this Writ Petition deserves to be set aside. Accordingly, the same is set aside and the Writ Petition is allowed. No costs. Consequently, M.P.No.1 of 2006 is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msr

To

1. The Deputy Commercial Tax Officer (Addl.)
   Tondiarpet Assessment Circle,
   Kuralagam Annexe, IV Floor,
   Chennai 600 108.

2. The Appellate Assistant Commissioner (CT) II,
   Kuralagam Annexe, VI Floor,
   Chennai 600 108.

3. The Deputy Commissioner (CT)
   Chennai (East Division)
   Greams Road, Chennai 600 006.

4. The Secretary,
   Tamilnadu Sales Tax Appellate Tribunal,
   (Addl. Bench), City Civil Court Building,
   II Floor,Chennai 600 108.

+1cc to Mr.T.Pramodkumar Chopda, Advocate, S.R.No.66081
+1cc to the Special Government Pleader(T), S.R.No.66441

W.P.No.29855 of 2006

MP(CO)
CA(19/01/2016)