IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.8.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.29773 of 2016 & WMP.No.25759 of 2016

Tvl.Selvi Starch Industries, rep.by
M.Nallammal, legal heir of late
Mr.M.Muthusamy, Proprietor of
Selvi Starch Industries,
Salem. ...Petitioner

Vs

1.The Appellate Assistant Commissioner,
(CT), Salem.

2.The Assistant Commissioner (CT),
Suramangalam Circle, Salem.

3.The Commercial Tax Officer
(Enforcement), Namakkal. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the order of rejection in Na.Ka.No.927/2016/A4 dated 18.7.2016 passed by the second respondent and further direct him to reconsider the Section 84 application dated 15.7.2016 filed by the petitioner thereby passing revised orders in CST/422021/1992-93 for the assessment year 1992-93 in accordance with law after granting an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.R.Ganesh Khanna for
Mr.C.R.Malarvannan

For Respondents : Mr.S.Kanmani Annamalai, AGP

ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has filed this writ petition challenging an order passed by the second respondent rejecting the petitioner's application filed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the TNVAT Act) dated 15.7.2016.

3. The petitioner is a registered dealer on the file of the second respondent and it was a proprietary concern managed by one Mr.M. Muthusamy - the husband of the present writ petitioner - M.Nallammal. The said Mr.M.Muthusamy died on 5.7.1996 and the petitioner was not aware about the nuances of the trade. She was not properly advised as to what action should be taken as against the assessment order dated 17.9.1999 passed under the Central Sales Tax Act, 1956 for the year 1992-93.

4. When coercive action was taken to recover the tax due, the petitioner was advised to file an appeal before the Appellate Authority and the appeal was rejected by the first respondent by order dated 21.7.2000 as being time barred. As against the order of the Appellate Authority, the petitioner preferred a second appeal before the Appellate Tribunal. In the said second appeal, the petitioner specifically stated that her husband died on 5.7.1996 and after his demise, she had no way to survive further, that she is physically weak and has been advised to bed rest by the doctors and that therefore, there is a delay in filing the appeal. The Appellate Tribunal, by order dated 17.4.2007, rejected the second appeal by confirming the order passed by the first respondent stating that the appeal filed beyond the condonable period of limitation cannot be entertained.

5. Thereafter, the petitioner filed a writ petition in W.P.No.20656 of 2016 before this Court challenging the order dated 17.9.1999. When the said writ petition came up before me on 17.6.2016, since the matter involved verification of the books of accounts and documents and after taking note of the fact that the petitioner was a widow, who had no previous experience in running the business, this Court was of the opinion that if there were any errors, the petitioner could approach the Assessing Officer by filing an application under Section 84 of the TNVAT Act. Therefore, the petitioner withdrew the said writ petition with liberty to file a petition under Section 84 of the TNVAT Act and accordingly, the said writ petition was disposed of on 17.6.2016. Thereafter, the petitioner filed an application under Section 84 of the TNVAT Act and that has been rejected by the impugned order dated 18.7.2016 as it has been filed belatedly and the delay cannot be condoned.

6. The second respondent is right in holding that the petition under Section 84 of the said Act has been filed with inordinate delay. However, considering the peculiar facts and circumstances of the case, this Court granted liberty permitting the petitioner to withdraw the said writ petition and approach the Authority concerned for reconsideration of the matter by placing materials. In the light of the orders passed in the earlier writ petition granting liberty, this Court is of the view that the second respondent should consider the petitioner's application under Section 84 of the TNVAT Act on merits and in accordance with law.

7. In view of the above discussion, the writ petition is allowed, the impugned order is set aside and the second respondent is directed to entertain the application dated 15.7.2016 and decide the same on merits and in accordance with law, after affording an opportunity of personal hearing to the authorized representative of the petitioner. Till orders are passed in terms of the above directions, no coercive action shall be initiated and the Form 7A and the Form 7M notices dated 12.7.2016 shall be kept in abeyance. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To
1.The Appellate Assistant Commissioner (CT), Salem.
2.The Assistant Commissioner (CT), Suramangalam Circle, Salem.
3.The Commercial Tax Officer (Enforcement), Namakkal.

1 cc to Special Government Pleader,(Taxes), sr.48488
1 cc to Mr.C.R.Malarvannan, Advocate, sr.48424
RS

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WMP.No.25759 of 2016

skv co
kra 09.09.2016