In the High Court of Judicature at Madras

Dated : 11.1.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.593 to 595 of 2018

M/s.Kalima Company, rep.by its Partner Shri.S.Mohamed Theeby Maricar ...Petitioner in all Writ Petitions

Vs

1.The Commercial Tax Officer (Enf.),
O/o the Assistant Commissioner (CT),
Roving Squad, Vellore-1.

2.The Joint Commissioner (ST),
O/o the Joint Commissioner (ST),
No.4, Bharathiar Salai, Vellore Division, Vellore-1. ...Respondents in all Writ Petitions

PETITIONS under Article 226 of The Constitution of India praying for the issuance of (i) a Writ of Certiorari to call for the records pertaining to the impugned order dated 09.11.2017 passed by the second respondent in RC/ A3/3624/17 and quash the same (WP.No.593 of 2018) and (ii) Writs of Certiorarified Mandamus to call for the records pertaining to the impugned draft detention/release order dated 27.3.2017 in Goods Detention Order No. 658/2016-17 in OR No.936/2016-2017 of the 1st respondent, quash the same and further direct the 1st respondent to refund the tax and compounding fee paid in respect of the impugned draft detention/release order dated 27.3.2017 in Goods Detention Order No.658/2016-17 in OR No.936/2016-2017 (WP.No.594 of 2018) and to call for the records pertaining to the impugned draft detention/release order dated 27.3.2017 in Goods Detention Order No.657/2016-17 in OR No.935/2016-2017 of the 1st respondent, quash the same and further direct the 1st respondent to refund the tax and compounding fee paid in respect of the impugned draft detention/release order dated 27.3.2017 in Goods Detention Order No.657/ 2016-17 in OR No.935/2016-2017 (WP.No.595 of 2018).

For Petitioner : Mr.Hari Radhakrishnan
For Respondents : Ms.G.Dhana Madhri, GA

COMMON ORDER

Ms.G.Dhana Madhri, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petitions are taken up for joint disposal even at the admission stage, in view of the issue involved in these writ petitions.

2. In the first writ petition, the petitioner is aggrieved by the order passed by the second respondent rejecting the petitioner's revision petition filed against the goods detention notices as barred by limitation, as it has been stated that it has been filed beyond the period of limitation prescribed under Section 54(1) of the Tamil Nadu Value Added Tax Act, 2006.

3. In the other two writ petitions, the petitioner has challenged the orders passed by the first respondent releasing the relevant goods and has sought further direction to the first respondent to refund the tax and the compounding fee paid in respect of both the cases.

4. In terms of the said provision, the petitioner has to file revision petition within a period of 30 days from the date of receipt of copy of the order and the second respondent has power to condone the delay for a further period of 30 days. Thus, beyond the period of 60 days, the second respondent has no jurisdiction to condone the delay. The petitioner does not dispute the legal position.

5. The learned counsel for the petitioner would further submit that the petitioner has an excellent case on merits, that on account of certain business exigencies and as the authorized representative was unwell, they could not immediately follow up the matter and that the cases on hand may be treated as an exception and relief may be extended to the petitioner.

6. The learned Government Advocate, on the other hand, would submit that beyond a period of 60 days, the second respondent has no jurisdiction to condone the delay and for that matter, this Court, while exercising jurisdiction under Article 226 of The Constitution of India, will not extend the period of limitation than what is stipulated under the Statute.

7. There can be no dispute as regards the legal position with regard to the power of this Court to extend the period of limitation. However, this Court finds that in the instant case, on the grounds raised by the petitioner, an opportunity can be granted to the petitioner considering the fact that the delay in filing the revision petition is not on account any willful or mala fide reasons, but on account of business exigencies and

also on account of the fact that the authorized representative was unwell, as pleaded by the petitioner. For that reason alone, this Court is inclined to entertain the writ petitions and grant liberty to the petitioner to prosecute the revision petition on merits.

8. Accordingly, the writ petitions are allowed, the impugned orders are set aside. The delay in filing the revision petition is condoned and the petitioner is directed to represent the revision petition along with a copy of this order, which shall be taken on file by the second respondent and a decision be taken on merits and in accordance with law. It is made clear that this order shall not be treated as a precedent and is confined only to the facts and circumstances of the present case. No costs.

-sd/-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Commercial Tax Officer (Enf.),
O/o the Assistant Commissioner (CT),
Roving Squad, Vellore-1.

2.The Joint Commissioner (ST),
O/o the Joint Commissioner (ST),
No.4, Bharathiar Salai, Vellore Division, Vellore-1.

+1C.C. to M/S.Hari Radhakrishnan Advocate SR.NO. 2775

+1 C.C. to The Government Pleader SR.NO. 3100

WP.Nos.593 to 595 of 2018

RR (CO)
VS 03.02.2018