IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2018

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THE HONOURABLE MR.JUSTICE K. RAVICHANDRA BABU

W.P.No.15315 of 2018
and
WMP.No.18173 of 2018

M/s.Kansai Nerolac Paints Ltd.
Rep. by its Authorized Signatory,
No.1, Central Warehouse Corporation Godown,
No.8, Arcot Road, Virugambakkam,
Chennai - 600 092. ... Petitioner

Vs.

1. The Assistant Commissioner (CT),
   Sholinganallur Assessment Circle,
   No. 141, Burma Colony, First Main Road,
   Perungudi, Chennai - 600 096.

2. The Appellate Deputy Commissioner (CT) (FAC)
   Chennai (East)
   PAPJM Building Annexure, 3rd Floor,
   No.1, Greams Road,
   Chennai - 600 006. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for records in assessment order passed by the 1st respondent in TIN No. 33020120021/2014-2015 dated 21.03.2017 and quash the same as illegal, arbitrary and against the statutory provision of the TNVAT Act and direct the 1st respondent to pass the orders as per law.

For Petitioner : Dr.A.Thiagarajan, Senior Counsel appearing for Mr.M.Nallathambi
For Respondents : Ms.G.Dhana Madhri Government Advocate (Tax)

O R D E R

This Writ Petition is filed challenging the order of assessment dated 21.03.2017 passed by the first respondent.

2. After notice, this writ petition is listed today for further hearing. This Court, while entertaining the writ petition on 22.06.2018, granted an order of interim stay as well.

3. Since the issue involved in this case lies in narrow compass which could be decided without filing a counter affidavit by the respondents, the writ petition itself is taken up for final disposal with the consent of the learned counsels appearing on either side.

4. Though this writ petition is filed challenging the order of assessment, by raising very many contentions on the merits of the assessment, this court is not inclined to go into such contentions and express any view on the same for the following reasons and circumstances:

a) Admittedly, as against the order of assessment impugned in this writ petition, a statutory appellate remedy is available to the petitioner before the concerned Appellate Authority.

b) It is also not in dispute that the petitioner has filed such an appeal before the Appellate Deputy Commissioner (CT) (FAC), Chennai (East), however, with delay.

c) It is seen that the said Appellate Authority through his communication dated 04.04.2018 returned the appeal filed by the petitioner and rejecting the same as not maintainable since the same was filed beyond the period of 30 days with further condonable period of another 30 days.

5. Therefore, now, the question remains for consideration is as to whether the Appellate Authority is justified in rejecting the appeal only on the ground of limitation and whether such order needs an interference.

6. The learned Senior Counsel appearing for the petitioner submitted that even though it is claimed that the order of assessment dated 21.03.2017 was communicated to the petitioner on the very same day in person, no authorized person of the petitioner has ever received such communication from the Assessing Officer and therefore, in the absence of proper communication of the assessment order, the date of receipt of the order from the Assessing Officer in pursuant to the request made by the petitioner for serving such copy, has to be construed as the date for the purpose of calculating the period of limitation. Therefore, it is contended that when the petitioner has received the order of assessment on 30.08.2017 in pursuant to the request made by them, the appeal filed before the Appellate Authority on 28.09.2017 was well within a time.

7. On the other hand, the learned counsel appearing for the respondents submitted that, when the assessment order was communicated to the petitioner on the very date of order itself, they should have filed the appeal before the Appellate Authority within the time prescribed.

8. Heard both sides.

9. Upon considering the facts and circumstances of the case and the submissions made by the learned counsels appearing on either side, it is evident that the petitioner has resorted to file a statutory appeal before the Appellate Authority on 28.09.2017 after receiving the order of assessment on 30.08.2017. Needless to say that the Appellate Authority being the fact finding authority has to go into the merits and contentions of the appeal for the purpose of deciding as to whether the Assessing Officer is justified in passing the order of assessment impugned in this writ petition. The only hurdle for the Appellate Authority in this case is that the appeal was not filed in time and that he has no power to condone the delay beyond the period of 60 days.

10. It is claimed by the first respondent that the order of assessment was communicated to the petitioner on the date of the order of assessment itself. Thus, it is apparent that such communication, even assuming true, was made only in person. Needless to say that when there are proper modes of communication of the orders, as contemplated under the Statute, the Assessing Authority ought to have communicated the order of assessment only through such modes, so that there can not be any ambiguity in respect of the date of receipt of such order, as such date is to be taken into consideration for calculating the period of limitation for filing the appeal against the said order of assessment. In this case, the communication of the assessment order was not done so.

11. Considering the above facts and circumstances, this Court is inclined to grant an opportunity to the petitioner to agitate the matter once again before the Appellate Authority, by representing the appeal, so that the same shall be considered and decided on merits and in accordance with law. Accordingly, this writ petition is disposed of, by directing the petitioner to represent the appeal before the Appellate Authority viz., the second respondent herein within a period of 10 days from the date of receipt of a copy of this order. On receipt of such appeal, the second respondent shall consider the same and pass orders on merits in accordance with law, without reference to the period of limitation. It is made clear

that this Court is not expressing any view on the merits of the assessment made by the first respondent/Assessing Officer, as it is for the second respondent/Appellate Authority to consider the same on its own merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

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   Sholinganallur Assessment Circle,
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   Perungudi, Chennai - 600 096.

2. The Appellate Deputy Commissioner (CT) (FAC)
   Chennai (East)
   PAPJM Building Annexure, 3rd Floor,
   No.1, Greams Road, Chennai - 600 006.

+1 cc to Mr.M.Nallathambi Advocate SR.NO.54516

+1 cc to SPECIAL GOVERNMENT PLEADER SR.NO. 54480

W.P.No.15315 of 2018

SNS(CO)
ASK(09/08/2018)