IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No. 43541 of 2016
an
W.M.P.No. 37363 of 2016

M/s.Virudhachalam Agri Producers
Co-Operative Marketing Society Ltd,
by its Managing Director
No.17, Cuddalore Main Road,
Periyar Nagar,
Virudhachalam - 606 001,
Cuddalore District. ...Petitioner

Vs.

Commercial Tax Officer,
Virudhachalam Assessment Circle,
Virudhachalam. ...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, calling for the records of the respondent and quash the assessment proceedings in TIN No. 33434424704/2013-14 dated 15.12.2015 and direct the respondent to pass fresh orders by providing an opportunity of personal hearing as per the mandatory provision Section 22(4) of TNVAT Act.

For Petitioner : Mr.C.Baktha Siromani
For Respondent : Mr. V.Haribabu,
Additional Government Pleader.

O R D E R

The petitioner has a impugned order dated 15.12.2015 in the year 2016 by filing the writ petition exactly one year after the impugned order came to be passed. In the impugned order, the petitioner was asked to reverse the credit which was belatedly availed under Section 19(11) of the Tamil Nadu Value Added Tax.

2. The learned counsel for the petitioner submits that as soon as the show cause notice was issued, the petitioner requested the respondent to give time to give their reply. However, before their reply could be filed, the impugned order

came to be passed without following the principles of natural justice. Therefore, the learned counsel appearing for the petitioner submits that impugned order is liable to set aside and having been passed without following the principles of natural justice.

3. Defending the impugned order, the learned Government Pleader appearing for the department submits that the issue is no longer is res-integra and is covered by latest decision of the Hon'ble Supreme Court rendered in ALD Automobiles Vs. Assistant Commissioner (CT) reported in 2018 SCC Online SC 1945 draws my attention to Paragraph 42, 43 and 46 which reads as under:-

> 42."This Court in the above case clearly laid down that whether particular provision is mandatory or directory has to be determined on the basis of object of particular provision and design of the statute. The period of 10 days in submitting the report of the public analyst was held to be directory for the reason that on the negligence of those to whom public duties are entrusted no one should suffer. Such interpretation should not be put which may promote the public mischief and cause public inconvenience and defeat the main object of the statute. The interpretation of the Rule 9(j) in the above case was on its own statutory scheme and has no bearing in the present case. We, thus, are of the view that time period as provided in Section 19(11) is mandatory.
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> Issue No.5
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> 43. One of the submission advanced by learned counsel for the appellant was that appellant assessee had valid explanation for not claiming Input Tax Credit within the time provided under Section 19(11), hence, the authority had jurisdiction to extend the time. It is submitted that time period as contained in Section 19(11) is not akin to the law of limitation. We have already found that expression "shall" occurring in Section 19(11) is mandatory whose compliance is necessary for claiming Input Tax Credit. The appellant has placed reliance on judgment of this Court reported in Surinder Singh Vs. Central Government, (1986) 4 SCC 667. Learned counsel submits that in the above case Central Government which was exercising authority under Displaced Persons (Compensation and Rehabilitation) Act, 1954 was held to be entitled to extend the time which was required for depositing the auction amount. In the above case, the officials of the Central Government were

exercising Revisional Jurisdiction as conferred under Section 33 of the Act to the Central Government. Facts of the case were noticed in Paragraph 9 of the following effect:-

9. The second question relates to the validity of the order of Shri Rajni Kanth the officer to whom power under Section 33 was delegated, extending time to enable the appellant to deposit the auction-sale money. Shri Rajni Kanth by his order dated February 6, 1970 exercising the delegated powers of the Central Government under Section 33 of the Act set aside the order cancelling the auction-sale held in August 1959 and permitted the appellant to deposit the balance of the purchase money within fifteen days from the date of the order with a default clause that on his failure his petition would stand dismissed. In accordance with that order appellant was entitled to deposit the money till February 21, 1970. It appears that on appellants's request the office prepared a challan which was valid up to February 20, 1970. The appellant went to the State Bank on February 20, 1970 to make the deposit but due to rush he could not make the deposit. On his application Shri Rajni Kant extended the time permitting the deposit by February 28, 1970 and within that period appellant deposited the balance purchase money..."

46. The above case was thus on its own fats, this Court held that in exercise of residuary power of Central Government, it had jurisdiction to pass such order in relation thereto as in its opinion the circumstances in the case require. In the scheme of Tamil Nadu Value Added Tax Act, 2006, there is no power conferred on any authority under the Act to dilute the mandatory requirement under Section 19(11). The taxing statute has to be strictly construed. Nothing is to be looked into fairly. The benefits envisaged in the taxing statue had to be extended as per the restrictions and conditions envisaged therein. The statute having not given by indication for extension of time which is a condition for claiming Input Tax Credit, the submission that period could have been extended by assessing authority is unfounded and cannot be accepted. Issue number 5 is answered accordingly."

4. He therefore submits that the writ petition apart from belated the issue on merits is also covered against the petitioner. In response to the above observation of the Hon'ble

Supreme Court by way of a re-joinder, the learned counsel for the petitioner submits that while disposing the batch of several appeals, the Hon'ble Supreme Court granted liberty to the petitioners in whose cases assessment has been finalized to file statutory appeal which substantially protects the interest of the appellants.

5. Heard Mr.C.Baktha Siromoni, learned counsel appearing for the petitioner and Mr.V.Haribabu, learned counsel appearing for the respondents and perused the records and the decision of the Hon'ble Supreme Court.

6. Though Paragraphs 42 and 43 and 46 cited above squarely answers the answer, in Paragraph 47, the Court has granted liberty to the petitioners in that cases to file statutory appeal and objections which substantially protect the interest of the appellants therein. Therefore, this present writ petition is disposed giving liberty to the petitioner to file a statutory appeal in accordance with law with 30 days of this order. The Appellate authority shall consider the appeal on merits and dispose the same within three months from the date of filing of such appeal.

Sd/-
Assistant Registrar(J)

/True Copy/

Sub Assistant Registrar

To

The Commercial Tax Officer,
Virudhachalam Assessment Circle,
Virudhachalam.

+1cc to The Special Government Pleader(Taxes), Sr.No.102645

AKM/14.02.2020 /4P-3C/

W.P.No. 43451 of 2016
and W.M.P.No. 37363 of 2016