BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.02.2019
CORAM:
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
W.P.[MD]No.21652 of 2016
and
W.M.P.[MD]No.15469 of 2016

Ramachandrakumar : Petitioner

Vs.

1.The Appellate Deputy Commissioner (CT),
Tirunelveli.

2.The Commercial Tax Officer,
Ettayapuram,
Thoothukudi District. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the first respondent in Na.Ka.A1/588/16, dated 15.09.2016, quash the same and direct the first respondent to entertain and consider the petitioner's appeal dated 01.09.2016.

For Petitioner : Mr.R.Subramanian
For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

O R D E R

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The instant writ petition has been filed challenging the order dated 15.09.2016 passed by the first respondent dismissing the appeal filed by the petitioner on the ground that the appeal has been filed beyond the period stipulated under Section 51 of the Tamil Nadu Value Added Tax Act, 2006 [hereinafter referred to as 'TNVAT Act'].

2.It is the case of the petitioner that he is a registered dealer under the TNVAT Act, 2006. It is his case that he did not receive the original assessment order dated 25.07.2016 passed by the second respondent and therefore, he was unable to file the appeal within the stipulated period as per Section 51 of the TNVAT Act, 2006. According to the petitioner, he obtained the assessment order only through the Right to Information Act. According to the petitioner, he preferred an appeal on 01.09.2016, after obtaining the assessment order dated 25.07.2016, through the Right to Information Act before the first respondent. The first respondent by the impugned order dated 15.09.2016, dismissed the appeal filed by the petitioner as it was filed beyond the period stipulated under Section 51 of the TNVAT Act, 2006. Aggrieved by the dismissal of the appeal, the instant writ petition has been filed.

3.A counter affidavit has also been filed by the second respondent, wherein they have stated that the assessment order was sent to the petitioner by speed post on 11.08.2015 but the dealer did not receive the registered cover and therefore, the copy of the order was once again served on 19.11.2015 in person at the dealer's premises on 19.11.2015 and obtained acknowledgment with seal. Therefore, according to the respondents, the petitioner having received the assessment order on 19.11.2015, the appeal filed by the petitioner before the first respondent is beyond the period prescribed under Section 51 of TNVAT Act, 2006, as the appeal will have to be filed within 30 days from the date of receipt of the original assessment order and only further extension of 30 days can be granted by the appellate authority. In all put together, the time prescribed for filing an appeal is only 60 days. Therefore, according to the respondents, the appeal having filed by the petitioner beyond the prescribed period is barred by limitation. Therefore, the writ petition is not maintainable.

4.Heard Mr.R.Subramanian, learned Counsel for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader for the respondents.

5.In the case on hand, even though the respondents have stated that the original assessment order dated 25.07.2016 passed by the second respondent against the petitioner was served on the petitioner on 19.11.2015 itself, no proof has been produced even before this Court or before the first respondent to prove that notice was served on the petitioner. Even before this Court, the respondents have only produced a returned cover with an endorsement 'left' for the notice sent by the respondent to the petitioner. Further, the impugned order dated 15.09.2016 is a non-speaking order and it does not reveal as to when the petitioner was served with the original assessment order by the second respondent.

6.It is settled law that the petitioner who is an assessee, must be given sufficient opportunity to raise all objections available to him under law to the demand made by the second respondent for the payment of the tax. Further, even as per the circular of the Government of Tamil Nadu, which is binding on the respondents, sufficient opportunity should be afforded to the assessee to raise their objection and they must also be given the right of personal hearing. In the instant case, the first respondent, while rejecting the appeal has not considered the statement made by the petitioner about the non-receipt of the assessment order and has also not considered the fact that no proof has been produced by the respondents to establish that the original assessment order was served on the petitioner. Instead, the first respondent has passed a non-speaking order simply rejecting the appeal filed by the petitioner on the ground that it has been filed beyond the prescribed period as stipulated under Section 51 of the TNVAT Act, 2006. No reasons have been given for dismissal of the appeal. Therefore, this Court is of the considered view that the first respondent has violated the principles of natural justice by not affording an opportunity to the petitioner to file an appeal against the assessment order dated 25.07.2016, passed by the second respondent.

7.In the result, this Court quashes the impugned order dated 15.09.2016, passed by the first respondent and directs the first respondent to entertain an appeal filed by the petitioner against the assessment order dated 25.07.2016, after it is represented within a period of 15 days from the date of receipt of a copy of this order and the first respondent shall dispose of the appeal on receipt of the same within a period of eight [8] weeks from the date of receipt of the appeal when the appeal is re-presented by the petitioner on merits and in accordance with law.

8.Accordingly, the Writ Petition is disposed of. However there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Appellate Deputy Commissioner (CT),
Tirunelveli.

2.The Commercial Tax Officer,
Ettayapuram,
Thoothukudi District.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-49610[F] dated 26/02/2019)

+1 CC to M/s.SPL GP (SR-49951[F] dated 26/02/2019)
MR

ORDER MADE IN
W.P.[MD]No.21652 of 2016
25.02.2019

KM/(19.03.2019) 3P 5C