IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 22429 of 2009

Tvl. Carborandum Universal Limited,
represented by its P.A. Holder,
Thiru. T.S.Ravi,
No. 43, Moore Street,
Chennai - 600 001. ... Petitioner

-vs-

1.The Tamil Nadu Sales Tax Appellate Tribunal (Main Bench) represented by its Secretary,
City Civil Court Building, Second Floor,
Chennai - 600 104.

2.The Assistant Commissioner (CT)
Fast Track Assessment Circle-III,
PAPJM Building, Greams Road,
Chennai - 600 006. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the First Respondent in T.M.P.9/2009 dated 16.07.2009 and quash the same and further direct the First Respondent to admit the appeal.

For Petitioner : Ms. R.Vijaya

For Respondents: Ms. G.Dhana Madhri
Government Advocate (Taxes)

O R D E R

(through video conference)

Heard Ms. R.Vijaya, Learned Counsel for the Petitioner and Ms. G.Dhana Madhri, Learned Government Advocate (Taxes) for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Order No. T.M.P. 9/2009 dated 16.07.2009 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench) refusing to entertain the Appeal filed by the Petitioner for the reason that the requisite amount of pre-deposit had not been made within the time limit prescribed for condoning delay in filing such appeal. In arriving at the conclusion, the First Respondent has relied on the decision of the Full Bench of this Court in State of Tamil Nadu -vs- E.P. Nawab Marakkadai [1996 (1) CTC 95], where it has been held as follows:-

> " These provisions regarding the filing of the appeal and the return for defects, if any, are in conformity with most of the provisions relating to an appeal in other statutes, and do not in any way take away the rigour of the second proviso to Section 31(1) of the Act. We are, therefore, firmly of the opinion that if there is no payment of the admitted tax within the period allowed for filing the appeal or within the extended period as specified in the Act for condonation of delay in preferring an appeal, no appeal can be said to have been filed. It is only when the payment of admitted tax is made that the appeal can be said to have been filed. We also make in clear that the words "no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable, as the case way be", as already stated by us in para 14 supra, are interpreted or the extended time prescribed, for filing an appeal even though the satisfactory proof may be produced later before the appeal is taken up for the first time for consideration. Consequently, it follows that if the payment of admitted tax is made beyond the period of 30 days prescribed for the filing of an appeal and beyond the period of 15 days in respect of which alone the appellate authority has power to condone the delay, then the appellate authority has to necessarily reject the appeal as barred by limitation."

It is not in dispute that the pre-deposit has been made after a period of 36 days, which is beyond the time limit prescribed for condoning such delay.

3. Having regard to the aforesaid legal position, there does not appear to be any infirmity in the impugned order requiring any interference by this Court in the exercise of the discretionary powers of the judicial review under Article 226 of the Constitution.

In the result, the Writ Petition, which cannot be entertained, is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.Tamil Nadu Sales Tax Appellate,
Tribunal (Main Bench)
represented by its Secretary,
City Civil Court Building, Second Floor,
Chennai - 600 104.

2.The Assistant Commissioner (CT),
Fast Track Assessment Circle-III,
PAPJM Building, Greams Road,
Chennai - 600 006.

+1cc to the Special Government pleader Sr.32865

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srg 06/11/2020