IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2020

CORAM

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

W.P. No. 22386 of 2018
and
W.M.P. No. 26230 of 2018

M/s. Shree Venkateshwara Enterprises,
Rep. by its Proprietor Mr. R.Vijayakumar,
Now at No. 43, Velu Complex,
New Colony, Sedarapet,
Puducherry - 605 111. ...Petitioner

-vs-

The Commercial Tax Officer - I,
Commercial Taxes Department,
100 Feet Road, Pudupalayam,
Puducherry - 5. ...Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the Respondent in TIN/34020016942/2017-18 dated 08.06.2018 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law.

For Petitioner : Mr. D.Vijayakumar
For Respondent : Mr. Stalin Abhimanyu,
Government Advocate (Puducherry)

O R D E R
(through video conference)

Heard Mr. D.Vijayakumar, Learned Counsel for the Petitioner and Mr. Stalin Abhimanyu, Learned Government Advocate (Puducherry) appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Respondent by Order No. 34020016942/2017-18 dated 08.06.2018 assessing the liability of the Petitioner for tax for the period from April 2017 to June 2017 under the Puducherry Value Added Tax Act, 2017 (hereinafter referred to as the 'PVAT Act' for short).

3. It is borne out from the materials placed on record by the Learned Government Advocate appearing for the Respondent that the Petitioner by authorization dated 26.04.2018 in the prescribed format had authorized one D.Srinivasan to represent him for the assessment proceedings relating to the period from 01.04.2017 to 30.06.2017 and he had produced the accounts and documents connected with the proceedings. The receipt of the said assessment order dated 08.06.2018 was acknowledged in writing by the said D.Srinivasan on behalf of the Petitioner as his authorized representative by an endorsement made in the copy of that order on 15.06.2018 to that effect. The Petitioner was entitled to prefer appeal against that order under Section 47 of the PVAT Act, within a period of 30 days from the date of their receipt before the Appellate Authority, who has been empowered to condone delay in filing such appeal for an extended period of 30 days, if sufficient cause for not preferring appeal within that period is made out. However, the Petitioner did not prefer any such appeal before the Appellate Authority, but has instead filed this Writ Petition on 28.08.2018 challenging the orders passed by the Respondent beyond the maximum limitation period of 60 days from the date of receipt of copy of those orders.

4. The Hon'ble Supreme Court of India in Assistant Commissioner (CT) LTU, Kakinada -vs- Glaxo Smith Kline Consumer Health Care Limited (Order dated 06.05.2020 in Civil Appeal No. 2413 of 2020) has emphatically laid down that the High Court in the exercise of powers under Article 226 of the Constitution of India ought not to entertain Writ Petition assailing the order passed by a Statutory Authority which was not appealed against within the maximum period of limitation before the concerned Appellate Authority.

5. When this Court highlighted that embargo to delve into the merits of the controversy involved in the matter, Learned Counsel for the Petitioner contended that the impugned order was actually received by the Petitioner from the said D.Srinivasan only on 04.08.2018 and that the Petitioner by letter dated 25.07.2018 had intimated the Respondent to serve any order to the Petitioner directly in person or through Registered Post and had not authorized anyone to collect assessment notices or orders or other proceedings on his behalf, implying that the service of the impugned order on the said D.Srinivasan as the authorized representative of the Petitioner on 15.06.2018 would not bind him. It must be noticed here that Section 70 of the PVAT Act, read with Rule 62 of the Puducherry Value Added Tax Rules, 2007 (hereinafter referred to as the 'PVAT Rules' for short) enables a dealer like the Petitioner to be represented by another person in the proceedings before the Authority under the PVAT Act for the purpose of assessment of tax liability. That apart, Rule 64(1)(a) of the PVAT Rules expressly states that

service on a dealer of any notice, summons or order under the PVAT Act or PVAT Rules may be effected either electronically or manually by giving or tender it to such dealer or his authorized representative. This would obviously mean that the receipt of the impugned order on 15.06.2018 by the said D.Srinivasan as the authorized representative of the Petitioner in terms of the authorization dated 26.04.2018 would amount to service of that order on the Petitioner himself. The letter dated 25.07.2018 sent by the Petitioner to the Respondent requesting that any order under the PVAT Act should be directly served on the Petitioner could have only prospective effect from that date and cannot by any stretch of imagination nullify the earlier delivery of the orders already made to the said D.Srinivasan as the authorized representative of the Petitioner. In that view of the matter, the contentions raised by the Learned Counsel for the Petitioner for reckoning the date of computation of limitation from 04.08.2018 cannot be accepted. It is made clear that no view has been expressed by this Court on the merits of the controversy involved in the matter.

In the result, the Writ Petition, which cannot be entertained, is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vjt

To

The Commercial Tax Officer - I,
Commercial Taxes Department,
100 Feet Road, Pudupalayam,
Puducherry - 5.

+1cc to Mr.D.Vijayakumar, Advocate, S.R.No.39973
+1cc to the Government Pleader for Puducherry, S.R.No.40558
+1cc to the Government Pleader for Puducherry, S.R.No.39909

W.P. No. 22386 of 2018

SR II (CO)
KKV/23/12/2020