IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.16291 & 16293 of 2020

and

WMP.Nos.20380, 20382, 20384 & 20383 of 2020

M/s.Balamurugan Stores
Rep. by its Partner - N.Mohan Sah
No.1 K.M.Chetty Street, Vellore 632 004.
Vellore District. .. Petitioner in both WPs

Vs

1.The Assistant Commissioner (CT)(FAC),
Vellore (South) Assessment Circle,
Vellore Vellore District.

2.The Appellate Deputy Commissioner (CT),
Commercial Taxes Building,
Vellore Vellore District. …Respondents in both WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to Writ of Certiorari to call for the records on the file of the 2nd Respondent in his impugned proceedings made in Mis.Pet.Nos.27 and 26 / 2020 dated 11.09.2020 respectively and to quash the same as illegal and contrary to the scheme of the Act and further direct 2nd Respondent herein to entertain the appeal filled by the petitioner for the assessment years 2011-12 and 2010-11 on merits.

For Petitioner both cases	:	Mr.S.Rajasekar
For Respondents both cases	:	Ms.G.Dhana Madhri, Government Advocate

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COMMON ORDER

Ms.G.Dhana Madhri, learned Government Advocate accepts notice for the respondents and is armed with instructions to proceed with the matter.

2. The petitioner challenges orders dated 11.09.2020 passed by R2/The Appellate Deputy Commissioner (CT) rejecting the petitioners' appeals on the ground that they are barred by limitation.

3. Orders of assessment were passed despite the petitioner having challenged the validity of Section 19(11) of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') before this Court at the stage of pre-assessment notices itself in W.P.No.15179 of 2012. It appears that pursuant to filing of the writ petition the petitioner has intimated the Assessing Officer that the validity of Section 19(11) had been challenged and the matters were pending before the Court requesting that the proceedings for assessment be deferred till such time the challenge was resolved. This fact finds place in the impugned assessment orders wherein the Assessing Authority notes the filing of declaration in Form Q in terms of Section 23 of the Act. The writ petitions challenging the vires of Section 19(11) were dismissed in U.S.A. Agencies V. The Commercial Tax Officer (W.P.No.909 of 2013 etc. batch dated 17.07.2013) and the matters thereafter travelled to Supreme Court wherein the vires of provision was again upheld in ALD Automobile P. Ltd Vs. Commercial Tax Officer (2018 3 GSTL 230). The judgment of the Supreme Court is dated 12.10.2018. It would have been appropriate for the petitioner to have challenged the orders of assessment passed originally immediately thereafter and within the period of 30 days granted in this regard, which timeframe was not availed by the petitioner.

4. In the affidavit filed in support of the writ petitions, the petitioner explains the delay in filing statutory appeals placing the blame at the door of the clerk of the Advocate on record (AOR). At para 7 the petitioner states that certified copy of the order was not applied for by the AOR and it was only in 2019 when recovery proceedings were initiated that the petitioner woke up and pursued the matter with him.

5. In the light of the explanation set out aforesaid, I am of the view that the appeal filed by R2 may be restored upon remittance of further 25% of the disputed tax in addition to the 25% of the disputed tax already remitted by it.

6. Ms.Madhri does not express any serious objection to this action. Accordingly, these writ petitions are disposed setting aside the order of R2 dated 11.09.2020. The petitioner is directed to remit a further 25% of the disputed taxes within a period of three (3) weeks from today. Upon proof of remittance of the same, the appeal shall be restored on the file of R2, to be adjudicated after hearing the petitioner on merits in accordance with law. No costs.

-s/d-

Assistant Registrar(CS)

True Copy

Sub-Assistant Registrar

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To

1.The Assistant Commissioner (CT)(FAC),
Vellore (South) Assessment Circle,
Vellore Vellore District.

2.The Appellate Deputy Commissioner (CT),
Commercial Taxes Building,
Vellore Vellore District.

+1 CC to Special Government Pleader, Sr.No.37802

+2 CC to M/S.R.HEMALATHA & Mr.S.Rajasekar Advocate Sr.No.37645, 37646

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UM(CO)
KP(19/12/2020)