IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2020

CORAM

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

W.P. No. 26054 of 2014
and
M.P. No. 1 of 2014

Siddharth Sales Corporation
Represented by its Proprietor - Manish
Lakshmi Bhavan, Ground Floor
28/53, Nammalvar Street
Chennai - 600 079. ...Petitioner

-vs-

1. The Commercial Tax Officer
   Peddunaikenpet (North) Assessment Circle
   Chennai - 600 00 .

2. M/s. RMP Infotec Private Limited
   No. 100, F1, First Floor
   Apollo Dubai Plaza
   Kodambakkam
   Chennai - 600 034. ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the proceedings of the Respondent in TIN No.33021141431/2011-2012 dated 30.09.2013 quash the same.

For Petitioner : Ms. S.Madhumitha
for Mr. S.Ravee Kumar
For Respondents : Mrs. G.Dhana Madhri,
Government Advocate (for R1)

O R D E R
(through video conference)

Heard Ms. S.Madhumitha, Learned Counsel for the Petitioner and Mrs. G.Dhana Madhri, Learned Government Advocate appearing for the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Respondent passed the Order in TIN No. 33021141431/2011-2012 dated 30.09.2013 assessing the liability for tax for the year 2011-2012 under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act' for short) in respect of the Petitioner, who had received the copy of that order on 12.10.2013. The Petitioner was entitled to prefer appeal against that order under Section 51 of TNVAT Act, within a period of 30 days from the date of its 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 26.06.2014 challenging the order passed by the First Respondent beyond the maximum limitation period of 60 days from the date of receipt of copy of that order.

3. 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. Having regard to that legal position, it is not possible for this Court to express any view on the correctness or otherwise on the merits of the controversy involved in the matter.

4. It is asserted by the Learned Counsel for the Petitioner placing reliance on the decisions of the Hon'ble Supreme Court of India in Samjuben Gordhanbhai Koli -vs- State of Gujarat [(2010) 13 SCC 466] and Tukaram Kana Joshi -vs- Maharashtra Industrial Development Corporation [(2013) 1 SCC 353] that there is no time restraint for this Court to exercise its plenary powers under the Constitution for entertaining Writ Petition. A differentiation is sought to be made for restricting the applicability of the ruling 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) only to the cases where appeal had been preferred before the Appellate Authority but declined to be entertained as time-barred, unlike the present one in which the Petitioner has directly approached this Court to challenge the impugned order after the maximum period of limitation has lapsed. It is not possible to countenance the said submissions inasmuch as a person, who has preferred appeal before the Statutory Authority, cannot be said to be in a more blameworthy position than one who has not at all preferred such appeal. The obvious rationale

behind the governing dictum is that where the maximum period of limitation prescribed in the statute for preferring appeal against an order before the Appellate Authority has lapsed, it is not permissible to circumvent the legislative intent manifested in that bar created by resorting to thereafter invoke the discretionary powers of the High Court under Article 226 of the Constitution, which would have to be judiciously exercised. It would be immaterial whether or not such time-barred appeal had been preferred to the Appellate Authority before filing of the Writ Petition.

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

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Commercial Tax Officer
   Peddunaikenpet (North) Assessment Circle
   Chennai - 600 001.

+1cc to Special Government Pleader(Taxes), S.R.No.40619
+1cc to Mr.S.Ravee Kumar, Advocate, S.R.No.40629

W.P. No. 26054 of 2014

GP(CO)
KKV/23/12/2020