IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos. 5095, 5102, 5104, 5109, 5112 & 5120 of 2021
and
WMP. Nos.5683, 5691, 5692, 5693, 5669, 5670, 5672, 5674, 5695, 5696, 5697, 5702, 5703, 5704, 5681, 5676, 5677 & 5679 of 2021

S.N.Natarajan and Co,
Rep by its Partner,
N. Natarajan,
No. 39, Patel Road,
Erode 638 001. .... Petitioner in the above WPs

Vs.

Additional Commissioner (ST) (FAC)
Brough Road Circle, No. 1,
Brough Road, Erode 638 001. .... Respondent in the above WPs

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent passed in TIN 33343001230/ 2011-12 to 2016-17 Respectively dated 28.11.2018 and quash the same and further direct the respondent to redo the assessment on the above in accordance with law after granting personal hearing.

For Petitioner : Mr.N.Murali in the above WPs

For Respondent : Mr.ANR.Jayaprathap,
Government Advocate in the above WPs

C O M M O N O R D E R

These writ petitions challenge six orders of assessment all dated 28.11.2018, passed in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short'Act') for the periods 2011-12 to 2016-17.

2. Since the writ petitions have been filed beyond the period provided under the statute for an appeal, the petitioner was asked to explain the delay in filing the appeal. In

response, the petitioner has stated that the last date for filing of an appeal statutorily was 01.02.2019. The appeal was filed on 06.03.2019 beyond the statutory period without the pre-deposit as provided for. The pre-deposit was remitted only on 14.01.2020 and the writ petitions have been filed on 19.02.2021 with laches of two years. The laches are explained by reference to a series of medical certificates and reports of laboratories to the effect that the managing partner of the petitioner firm was suffering from a cardiac problem. The reports span the period from 23.10.2019 to 21.02.2020.

3. In the case of Assistant Commissioner (Ct) LTU vs. M/s.Glaxo Smith Kline Consumer Health Care Limited [(2020 (36) GSTL 305 (SC)], the Supreme Court has reiterated the settled position in regard to entertaining of writ petitions filed beyond the statutory period of limitation. I have had occasion to apply the ratio thereof in a batch of writ petitions (W.P.Nos.15679 of 2020 and batch) and by order dated 03.03.2021, have stated that in cases where the writ petitions have been filed beyond the period of statutory limitation, it is incumbent upon the Court to consider the reasons for delay and only if the laches has been properly explained, proceed to consider the challenge to the orders of assessment, on merits.

4. In the present case, as far as laches is concerned, I find that a reasonable explanation has been set out and medical certificates filed to explain the elapse of time between the receipt of the impugned orders of assessment and the filing of the present writ petitions. Moreover, the petitioner was put to terms to establish its bonafides and today confirms that the disputed tax remitted in full. A certificate to this effect has been issued by the Assessing Authority dated 09.04.2021 which is also on record. The delay in approaching this Court by way of the present writ petition, stands explained.

5. As far as the orders of assessments are concerned, on merits, a pre-assessment proposal was issued, to which a reply was filed and after consideration of the reply, the impugned orders have come to be passed though without hearing the petitioner personally.

6. Learned counsel for the petitioner would request that the petitioner be permitted to file a statutory appeal and this request is acceded to. Let an appeal be filed within a period of two (2) weeks from today, in which case, the same shall be received by the Registry of the first appellate authority without reference to limitation. In view of the fact that the entirety of the disputed tax has been remitted, there would be no necessity to remit any further amount by way of pre-deposit.

7. These writ petitions are allowed in the aforesaid terms. Connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

rkp

To

Additional Commissioner (ST) (FAC)
Brough Road Circle, No. 1,
Brough Road, Erode 638 001.

+6cc to Mr.N.Murali, Advocate, S.R.No. 23954

+1cc to the Special Government Pleader(Taxes), S.R.No. 24444

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JP(CO)

GN(28/06/2021)