BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.08.2021
CORAM
THE HON'BLE MR.JUSTICE R.SURESH KUMAR
W.P.(MD)No.14388 of 2021
(Through Video Conference)

Sri Balamurugan&Co.,
Rep. by its Partner,
P.Natarajan .. Petitioner

Vs.

1.The Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench),
Madurai-20.

2.The Assistant Commissioner (ST)-II,
Palani. .. Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to quash the ex-parte order of the 1st respondent passed in MADURAI TRIBUNAL STATE APPEAL NO.418 of 2001 dated 04.04.2018, passed after setting the petitioner ex-parte in the State Appeal preferred by the State and for restoration of the State Appeal in M.T.S.A.No.418/2001 on file and direction to the 1st respondent to decide the same on merits after hearing the petitioner and dispose of the same on merits and in accordance with law.

For Petitioner : Mr.A.Chandrasekaran
For Respondents : Mr.R.Suresh Kumar
Government Advocate

ORDER

Prayer sought for herein is for a Writ of Certiorarified Mandamus, to quash the ex-parte order of the 1st respondent passed in Madurai Tribunal State Appeal No.418 of 2001 dated 04.04.2018, passed after setting the petitioner ex-parte in the State Appeal preferred by the State and for restoration of the State Appeal in M.T.S.A.No.418/2001 on file and direction to the 1st respondent to decide the same on merits after hearing the petitioner and dispose of the same on merits and in accordance with law.

2.The respondents State preferred an appeal before the first respondent-Tribunal in MTSA.No.418 of 2001, where the petitioner-dealer is a respondent. It is a case of the petitioner that, the said appeal had been attended regularly by the representative of the petitioner, however, after some years, since there had been change of address in the business place of the petitioner, there could not have been any contact between the petitioner and his authorised representative, therefore, due to the efflux of time as the appeal had been of the year 2001, there had been some mis-communication or no communication, with the result, when the appeal was taken up for hearing some time in the year 2018, since there was no representation on behalf of the petitioner, who stood as the respondent in the appeal before the Tribunal, the Tribunal, by its order dated 04.04.2018 set the petitioner exparte and allowed the appeal filed by the State.

3.In this context, it is the further case of the petitioner that, eventhough such an exparte order was passed, by thus the appeal filed by the State was allowed by the Tribunal on 04.04.2018, the copy of the order has not been communicated to the petitioner. After some time, that is, very recently, since there has been a consequential proceedings issued for attachment of the property of the petitioner for recovery of the alleged tax due, pursuant to the appeal filed by the State was allowed as per the said order, dated 04.04.2018, the petitioner started enquiring the matter and in this regard, he has got some RTI enquiry reply, under which, it has been communicated to the petitioner by the Tribunal stating that the order passed on 04.04.2018 was despatched from the office of the Tribunal on 11.06.2018, however, the same was returned by the postal authorities. Therefore, by virtue of the said reply categorically given by the first respondent Tribunal to the RTI enquiry of the petitioner, the exparte order, dated 04.04.2018 allowing the appeal filed by the State, had not at all been communicated to the petitioner. Thereafter, the petitioner made some request by way of application dated 31.03.2021, this has been communicated by the Tribunal stating that as per the provisions available under the Tamil Nadu Value Added Tax Appellate Tribunal Regulations, 2011, in short, Regulations, mere communication by sending or despatching the summons, notice or orders passed by the Tribunal by office of the Tribunal is enough, and therefore, since the same has been despatched already as indicated above dated 11.06.2018, there ends the matter, therefore, it need not be ensured by the Tribunal that the said communication despatched by the Tribunal reached the petitioner, who was the respondent in the appeal. In view of the said stand taken by the first respondent Tribunal, it was apprehended that, even if any application is filed to condone the delay, by invoking the provisions of the regulations, especially, under Regulation 8(4) r/w 8(5), such an application would not be entertained by the first respondent Tribunal by stating the aforesaid reason, therefore, having no other option, the petitioner filed the present writ petition, challenging the exparte order passed by the first respondent, Tribunal dated 04.04.2018, that is, how the writ petition has been filed.

4.Heard Mr.A.Chandrasekaran, learned counsel appearing for the petitioner, who, having reiterated the aforesaid facts, would invite the attention of this Court on the provisions of Regulation 8 of the said Regulations which reads thus:

> "8. *Notice of Hearing and Re-admission of appeal.*—(1) As soon as may be after the registration of the appeal, the Secretary shall set a date for hearing and shall send a notice to the Appellant / Applicant and Respondent and the State Representative in Form C, Form D, Form E, and Form F in the Appendix, as the case may be. A copy of the memorandum of appeal and of the order appealed against shall also accompany the notice.
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> (2) The notice issued under sub-regulation (1) shall state that if he does not appear on the date so fixed or on any other date to which the hearing may be adjouned, the appeal will be dismissed for default or disposed of on merits, *ex-parte*, as the case may be.
>
> (3) If the Appellant or the Respondent does not appear on the date so fixed or any other date to which the hearing may be adjourned the Appellate Tribunal may dismiss the appeal for default or dispose of on merits, or *ex-parte* as the case may be.
>
> (4) When an appeal has been dismissed for default or disposed of *ex-parte,* the Appellant or the Respondent as the case may be, may apply to the Appellate Tribunal for readmission of the appeal or for setting aside the order passed *ex-parte,* and where it is shown to the satisfaction of the Appellate Tribunal that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Appellate Tribunal may readmit the appeal or set aside the order passed *ex-parte* as the case may be.
>
> (5) An application referred to in sub-regulation (4) shall be made within thirty days from the date of communication of the order referred to in sub-regulation (3):
>
> Provided that the Appellate Tribunal may re-admit the appeal beyond the said period of thirty days, if it is satisfied that the petitioner had sufficient cause for not applying for re-admission

within the said period."

5.By relying upon the said Regulation, especially, the sub-regulations 4 and 5 of Regulation 8, the learned counsel submitted that, though a provision is available in the Regulations to approach the Tribunal to get the exparte order set aside for sufficient reasons stated in this regard before the Tribunal, if such an attempt is made by the petitioner, that would not be accepted in view of the preemptive stand taken by the Tribunal as reflected in their communication referred to above, therefore, the learned counsel seeks indulgence of this Court against the present impugned order, which is, ofcourse, an exparte order.

6.Per contra, Mr.R.Suresh Kumar, learned Government Advocate appearing for the respondents, would submit that, though there is a provision available under the Regulations as stated, to file a petition to set aside the exparte order, the same should have been made within a period of 30 days from the date of communication of the order, and if within 30 days, no such application is filed, and that itself belatedly filed and as per the provision of Sub-regulation 5 of Regulation 8, the party can give a satisfactory and plausible reason to the satisfaction of the Court, based on which, the delay may be condoned, however, for such a long delay, the present reasons stated by the petitioner, whether would be accepted or not, has only to be decided by the Tribunal. Therefore, the petitioner, without exhausting the said remedy by invoking the provisions of the Regulations stated supra, since has approached this Court straight away by filing the writ petition under Article 226 of the Constitution of India, this writ petition cannot be entertained, he contended.

7.I have considered the said rival submissions made by the learned counsel for the parties and have perused the materials placed before this Court.

8.It is an admitted fact that the order impugned dated 04.04.2018, passed by the first respondent is an exparte order, where reasons stated or to be stated by the petitioner for not appearing before the Tribunal, at the time of taking up the appeal for decision, is to be accepted or not, cannot be decided by this Court, as it is the exclusive domain and jurisdiction of the Tribunal to decide, based on the plausible reasons to be submitted in this regard.

9.However, before approaching the Tribunal for filing the petition to set aside the exparte order as contemplated under Regulation 8 (5) as stated supra, it is the only apprehension on the part of the petitioner that, since preemptively, the Tribunal has taken a stand that mere despatch of the order is enough to satisfy the provisions of the Rules, that the order has been communicated, however, fact remains that, the said communication has not been received by the petitioner, and it is admitted by the first respondent Tribunal through the RTI enquiry that, the order despatched on 11.06.2021 has been returned by the postal authorities. However, the petition, in that aspect, since has not been considered by the first respondent Tribunal, they may say the same reason for rejecting the application to be filed in this regard for condoning the delay in filing the application for set aside the exparte order. Therefore, on that apprehension only, the petitioner has approached this Court. In this regard, this Court is of the view that, the said reason, if at all, to be stated by the Tribunal as indicated in their communication dated 20.04.2021, in the *prima facie* view of this Court, may not be justifiable, because, the word 'communication' used in the Sub-regulation 5 of Regulation 8 of the said Regulations is nothing but a communication of the order passed under sub-Regulation 3, that means, the order exparte passed by the Tribunal shall be ensured to be reached or served on the party against whom, such an order has been passed.

10. In the case in hand, it is an admitted fact that, the order dated 04.04.2018, though despatched on 11.06.2018, it has been returned by the postal authorities. For what reason it has been returned to the postal authorities has not been stated, however, it remains that, the order despatched by the Tribunal has not been communicated or reached or served on the petitioner. Therefore, in the considered opinion of this Court, the said factor that the order having been not served on the petitioner, cannot be treated as communication within the meaning of sub-regulation 5 of Regulation 8 and thus, 30 days limitation period normally would commence from the date of communication of the order. Therefore, that communication, since has not been made and the petitioner, after a long time, had obtained the order impugned herein, dated 04.04.2018, only by way of RTI information, the said reason, which is apprehended now on behalf of the petitioner, which may be given by the Tribunal, may not be justifiable and therefore, on that reason, this Court feel that the application, if any, to be filed under Regulation 8 (4) or 8 (5) may not be rejected.

11. In that view of the matter, this Court feel that, it is open to the petitioner to file appropriate application under Regulation 8 as indicated above, to set aside the exparte order, dated 04.04.2018, which is exactly impugned herein, and such attempt shall be made by the petitioner within a period of two weeks, and if such an application is filed, the same shall be considered and order shall be passed, especially, with regard to the delay in approaching the Tribunal in filing the said application to set aside the exparte order, wherein, the aforesaid observation shall be borne in mind by the first respondent Tribunal and accordingly, necessary orders to that effect shall be passed.

12. With these observation and direction, this Court feel that the petitioner can be relegated to approach the Tribunal as indicated above, and accordingly, this writ petition is disposed of. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (AD I)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

PJL

<u>Note:</u> In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench),
Madurai-20.

2.The Assistant Commissioner (ST)-II,
Palani.

+1 CC to M/s.A.CHANDRASEKARAN, Advocate (SR-26308[F] dated 13/08/2021)
+1 CC to M/s.SPL GP(SR-26377[F] dated 16/08/2021)

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