BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.6747 to 6750 of 2017
and
W.M.P.(MD)Nos.5321 to 5324 of 2017

M/s.K.M.Khan & Sons,
Represented by its Parnter M.Abdul Gaffur,
47/3, West Great Cotton Road,
Thoothukudi. ... Petitioner in all W.Ps.

-Vs-

1.The Appellate Deputy Commissioner (CT) (FAC),
1st Floor, Commercial Taxes Building,
Reserve Line Road, Tirunelveli.

2.The Assistant Commissioner (CT)-1,
Commercial Tax Buildings,
Tuticorin. ... Respondent in all W.Ps.

Prayer in W.P.(MD)No.6747 of 2017: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to common order dated 22.12.2016 passed by the first respondent in Appeal No & year V/131/2016, V/132/2016, V/133/2016 & V/134/2016 in respect of the assessment year 2008-09(V/131/2016) and quash the same as arbitrary and illegal and direct the respondent to entertain the appeal and decide the same on merits.

Prayer in W.P.(MD)No.6748 of 2017: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to common order dated 22.12.2016 passed by the first respondent in Appeal No & year V/131/2016, V/132/2016, V/133/2016 & V/134/2016 in respect of the assessment year 2009-10(V/132/2016) and quash the same as arbitrary and illegal and direct the respondent to entertain the appeal and decide the same on merits.

Prayer in W.P.(MD)No.6749 of 2017: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to common order dated 22.12.2016 passed by the first respondent in Appeal No & year V/131/2016, V/132/2016, V/133/2016 & V/134/2016 in respect of the assessment year 2010-11(V/133/2016) and quash the same as arbitrary and illegal and direct the respondent to entertain the appeal and decide the same on merits.

Prayer in W.P.(MD)No.6750 of 2017: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to common order dated 22.12.2016 passed by the first respondent in Appeal No & year V/131/2016, V/132/2016, V/133/2016 & V/134/2016 in respect of the assessment year 2011-12(V/134/2016) and quash the same as arbitrary and illegal and direct the respondent to entertain the appeal and decide the same on merits.

For Petitioner : Mr.S.Karunakar
For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader
(in all W.Ps.)

COMMON ORDER

Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

2.The petitioner is a dealer registered with the second respondent. The assessment years pertain to 2008-09 to 2011-12. The petitioner's concluded assessments were sought to be re-opened under Section 27 of TNVAT Act, 2006. Pre-revision notices were issued on 07.12.2015. The petitioner failed to give their objections. Be that as it may, the revised assessment orders for the said period were passed on 22.01.2016. Instead of preferring an appeal, the petitioner applied for rectification under Section 84 of TNVAT Act. The petitioner was given some relief in the rectification proceedings and the order under Section 84 of the Act was passed on 05.05.2016. In respect of the portion, for which, the petitioner was denied relief, the petitioner filed appeals on 01.06.2016. The said appeals were dismissed by the impugned order dated 22.12.2016 on the ground that they were filed beyond the limitation period. The same is questioned in these writ petitions.

3.The impugned order suffers from an obvious error. The petitioner had a choice of remedy as against the order dated 22.12.2016 passed under Section 27 of the Act. He could have filed an appeal or applied for rectification. The petitioner chose to apply for rectification under Section 84 of the Act. If the rectification petition stands dismissed in *toto*, then the petitioner can file a revision. If the rectification petition is allowed, the department can apply for appeal. Likewise, if the earlier assessment order was modified, then appeal would lie. It is this appellate remedy which the petitioner availed.

4. Section 84(5) of TNVAT Act states that the provision of this Act relating to appeal and revision will apply to an order or rectification. Therefore, the petitioner could have filed an appeal within 30 days. He also had a further period of 30 days for the purpose of condonation of delay. In other words, if an appeal

against an order of this nature was filed after 60 days, it could not have been entertained. In the case on hand, there is no dispute that the appeal was filed on 01.06.2016. The rectification orders had been passed on 05.05.2016. In other words, the petitioner did not even have to file a petition for condonation of delay. It was filed well within the limitation period. But unfortunately, the first respondent chose to compute the period of limitation with effect from the date of original assessment order passed under Section 27 of the Act. It was patently erroneous.

5.On this sole ground, the orders impugned in the writ petition are quashed. The writ petitions are allowed. The matter is remitted to the file of the first respondent. The first respondent will hear the matter and dispose it of in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :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 Appellate Deputy Commissioner (CT) (FAC),
1st Floor, Commercial Taxes Building,
Reserve Line Road, Tirunelveli.

2.The Assistant Commissioner (CT)-1,
Commercial Tax Buildings,
Tuticorin.

+1 CC to Mr.S.KARUNAKAR, Advocate (SR-8117[F] dated 02/03/2021)
+1 CC to SPL GP (SR-8175[F] dated 02/03/2021)

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