IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Appeal Nos. 504 and 506 of 2022
and
C.M.P. Nos. 3643 and 3646 of 2022

M/s. Raghul Power Agencies
represented by its Proprietor
K.Vedamoorthy,
No.34, Polur Main Road,
Tiruvannamalai .... Appellant in both WAs

Versus

The Deputy Commercial Tax Officer,
Tiruvannamalai-I Assessment Circle,
Tiruvannamalai,
Tiruvannamalai District. .. Respondent in both WAs

Appeals filed under Clause 15 of the Letters Patent against the orders dated 03.03.2021 passed in W.P. Nos. 14722 and 14720 of 2020 respectively.

Prayer in W.P.Nos.14722 and 14720 of 2020: Writ Petitions fild under Article 226 of Constitution of India, praying for issuance of Writs of Certiorari or any other appropriate Writ, order or direction in the nature of writ, calling for the records pertaining to the impugned order passed by the Respondent in TIN. 33884521893/2012- 13, 2011-12, respectively dated 26.05.2016, and quash the same as unconstitutional and violation of principles of natural justice.

For Appellant : Mr. K.M. Malarmannan
in both the appeals

For Respondent : Mr.V.Prashanth Kiran
Govt. Advocate (Taxes)
in both the appeals

COMMON JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

These intra-court appeals have been filed by the appellant, calling in question the correctness of the order dated 3.3.2021 passed by the learned Judge dismissing the Writ petition Nos. 14720 and 14722 of 2020 filed by them.

2. According to the appellant, the respondent passed final orders of Assessment on 13.5.2016 and 26.5.2016 in respect Assessment years 2011-2012 and 2012-2013 respectively based on the commercial taxes website report without considering the annual returns and other documents filed by them. Therefore, the appellant has filed W.P. Nos.14720 and 14722 of 2020 to quash the orders of assessment dated 13.5.2016 and 26.5.2016 respectively.

3. The learned Judge dismissed both the writ petitions, along with other writ petitions, by a common order dated 03.03.2021 on the ground that the orders of assessment were subjected to challenge belatedly after five years and beyond the period prescribed under the Tamil Nadu Value Added Tax Act, 2006 (in short, the Act) for filing an appeal before the appellate Assistant Commissioner/Deputy Commissioner (Appeals). The learned Judge, while dismissing the writ petitions, has inter-alia observed that 'no explanation is adduced for the delay in filing the writ petitions between the date of receipt of orders of assessment and the date of filing of the writ petitions during 2020. Feeling aggrieved against such orders passed by the learned Judge, the present writ appeals have been filed before this Court.

4. Mr. K.M. Malarmannan, learned counsel appearing for the appellants contended that the learned Judge has not considered the additional affidavit filed by the appellant on 15.2.2021 explaining the reasons for the delay in preferring the writ petitions. It was specifically explained by the appellant in the additional affidavit that one of staff of the appellant company by name Ravimoorthy has received the orders of assessment passed by the respondent on 4.6.2016, but did not communicate it to the appellant company and he also resigned his job in the meanwhile and therefore, the writ petitions could not be filed in time. It is his further contention that the appellant was aware of the orders passed by the respondent only after receipt of recovery notice dated 27.1.2020 to the Indian Bank, Administrative Branch, Kadaperi to freeze the appellant's Bank account. Even the recovery notice was not served on the appellant and it was informed by the Bank Manager to the appellant. Further, on account of lockdown announced to arrest the spread of COVID 19 Pandemic, the appellant could not

immediately file the writ petitions. Since the orders passed by the respondent were not immediately communicated by the staff of the appellant company, as stated above, the certified copies of the assessment orders were obtained and thereafter the writ petitions were filed. The learned Judge, without taking note of the above facts and circumstances of the case, dismissed the writ petitions on the ground of limitation and thus he prayed for allowing of these appeals.

5. Refuting the above contentions, Mr. V. Prashanth Kiran, learned Govt. Advocate (Taxes) would submit that in the additional affidavit filed by the appellant, they have admitted the issuance of pre-assessment notice dated 30.3.2016, but they did not respond to them. Subsequently the assessment orders were also served on the appellant on 4.6.2016 itself, but the appellant chose to prefer the writ petitions belatedly with a delay of five years. Pointing out the same, the learned Judge dismissed the writ petitions by observing that 'no explanation is adduced for the lapse of time between 04.06.2016 and date of filing of the writ petitions during the year 2020. Therefore, the learned Government Advocate would submit that there is no infirmity or illegality in the orders passed by the learned Judge warranting interference of this Court and prayed for dismissal of both the Writ Appeals.

6. On appreciation of the facts leading to the filing of the writ petitions and the submissions made on behalf of the counsel on either side, we are of the view that in the given facts and circumstances of the case, the learned Judge is wholly justified in dismissing the writ petitions inasmuch as they were filed with enormous delay. Therefore, we decline to interfere with the orders passed by the learned Judge.

7. At this juncture, the learned counsel for the appellants urge before us to take note of the fact that the orders of assessment have been passed based on the data available in the web portal of the appellant company and after collecting such details, the assessing officer did not afford any opportunity to the appellant to produce the materials to substantiate their case. The learned counsel for the appellant also fairly submitted that the appellants failed to approach the appellate authority within the time limit and therefore, they have invoked the discretionary jurisdiction conferred on this Court under Article 226 of The Constitution of India and filed the writ petitions. Therefore, the learned counsel for the appellant prayed this Court to grant liberty to the appellant to file statutory appeals before the Appellate Authority and on such filing, the appellate authority may be directed to entertain it without raising any issues with regard to limitation and to decide the appeals on merits.

8. Having regard to the above submission made by the counsel for the appellant, which has not been seriously opposed by the revenue, we grant liberty to the appellant to file statutory appeals before the appellate authority, within a period of two weeks from the date of receipt of a copy of this judgment. If any such appeal is filed by the appellant, the appellate authority shall entertain the same without raising any issues on limitation and proceed further in accordance with law. If the appellant fails to file such appeals within the stipulated time by this Court, it is open to the assessing authority to proceed further in the manner known to law.

9. With the above observations, these writ appeals stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

gba/rsh

1.The Deputy Commercial Tax Office,
Tiruvannamalai-I, Assessment Circle,
Tiruvannamalai, Tiruvannamalai District.

+2cc to Mr.K.M.Malarmannan, Advocate, S.R.No.16090, 16089

WA. Nos.504 & 506 of 2022

GPL(CO)
SB(04/04/2022)