IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2022

CORAM :

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HON'BLE MR. JUSTICE C.SARAVANAN

W.P.No.15763 of 2003

Midhun Textiles
Tirupur
Rep. by its Proprietrix
TMT.Banumathy
W/o.N.Palanisamy
D.No.43, Ramaiah Colony
Main Road
Tirupur -2. .. Petitioner

Versus

1. The Tamil Nadu Taxation Special Tribunal
   Chennai- 600 001.

2.The Deputy Commercial Tax Officer,
   North Circle,
   Tirupur. .. Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorari to call for the records of the 2nd Respondent is imposed in and by his proceedings in TNGST No.2304118/1999-2000 dated 02.05.2002 and which was confirmed by the 1st Respondent in O.P.No.52 of 2003 dated 09.04.2003 and set aside the same.

For Petitioner : Ms.T.Rama
(No appearance)

For Respondents : Ms.Amirtha Poonkodi
Dinakaran
Government Advocate

O R D E R

S.VAIDYANATHAN,J
and
C.SARAVANAN, J

This Writ Petition has been filed to call for the records of the 2nd Respondent in his proceedings in TNGST No.2304118/1999-2000 dated 02.05.2002 as confirmed by the 1st Respondent in O.P.No.52 of 2003 dated 09.04.2003 and set aside the same.

2.The Petitioner had suffered an Assessment Order in the hands of hte 2nd Respondent for the Assessment Year 1999-2000 on 02.05.2002. The dispute pertains to determination of the taxable turnover and exemption claimed by the Petitioner, which was sought to be denied by the 2nd Respondent vide order dated 02.11.2002. A Statutory Appeal before the Appellate Assistant Commissioner under the provisions of

Tamil Nadu General Sales Tax Act, 1959 (in short 'the Act') was not invoked. Instead, the Petitioner belatedly invoked revisional jurisdiction of the 1st Respondent Tribunal under Section 38 (A) of the Act beyond the period of limitation. By the Impugned Order, the 1st Respondent has dismissed the Revision filed by the Petitioner with the following observations:

> *"6. The Respondent has contended that as the A1 returns filed by the Petitioner was not containing the required particulars, he issued summons dated 19.12.2001 to produce the books of accounts within 15 days from the date of receipt of summons. As the summons could not be served on the petitioner in person, it was served by affixure. The respondent issued another summon to the petitioner for production of accounts on or before 26.4.2002 and the said summon was served on Mr.N.Palanisamy, husband of hte petitioner on 5.4.2002. The Petitioner has admitted that her husband and their accountant and the consultant met the respondent in person. However, the petitioner has contended that without sending any summons for the production of the account books, the respondent has passed the impugned order. On the contrary, the Respondent has clearly stated that inspite of two opportunities granted to the Petitioner, they did not appear with their books of accounts. When the petitioner has admitted that on receipt of the summon dated 05.04.2002, her husband met the respondent, it was an opportunity for the production of the books of accounts. However, the petitioner did not produce the books of accounts. On the contrary, the petitioner is*

trying to shift the blame on the respondent saying that though the respondent promised to issue summons for production of accounts, he had passed the impugned order without issuing any summons. The respondent in the assessment order has clearly stated that as the petitioner was eligible for self-assessment, they had to submit the annual returns in Form A12 duly audited and certified by a Chartered Accountant along with the statements prescribed under the Tamil Nadu General Sales Tax Act on or before 31.12.2000 and the petitioner had neither filed the Form A12 return nor the statement of accounts nor produced the accounts for final check till the date of passing of the impugned order dated 2.5.2002. A mere perusal of the assessment order would go to show that inspite of the opportunities granted, the petitioner has neither filed Form A12 returns nor the statements of accounts nor produced the books of accounts for final check. Having failed in their duty in producing those documents and books of accounts, the petitioner is trying to shift the blame on the respondent.

7. Learned counsel for the Petitioner has drawn our attention to Rule 12, 15(5) and 15(6) of the Tamil Nadu General Sales Tax Rules, 1959.

Rule 12 says that whenever the return submitted by a dealer appears to the assessing authority to be incorrect or incomplete, the assessing authority before taking action under Rule 11 to issue notice to the dealer calling upon him to produce the accounts and registers. The assessment order clearly says that inspite of notice issued, the petitioner has never turned up, they neither filed Form A-12 returns, nor produced the accounts.

Rule 15 (5) is applicable to a case where the return is filed in Form A1 and the books of *accounts were produced. The petitioner has neither filed the A12 return under the self-assessment scheme nor produced the books of accounts to verify whether the accounts filed were correct and complete. In the absence of the production of books of accounts and also filing of A12 return, the assessing authority passed the assessment order on best of its judgment. The petitioner has never stated that the books of accounts were produced before the respondent for check of accounts as contemplated under the Rules. In these circumstances, the respondent had no other go except to pass the assessment on best of its judgment.*

8) The petitioner has admitted that she has not filed an appeal before the concerned Appellate Assistant Commissioner under the provisions of Section 31 of the Tamil Nadu General Sales Tax Act. Though the Petitioner has stated that she has unwell, the fact is otherwise that her husband Mr.N.Palanisamy who received the summons on 5.4.2002 along with their accountant and the consultant met the officer concerned. Further, the assessment order was served on the petitioner on 4.12.2002. Having received the assessment order, the petitioner has not filed the appeal in time and therefore she cannot blame anyone else for her failure to file an appeal.

9) In the second paragraph of the affidavit, the petitioner has stated that the original petition has been filed by invoking Section 38A of the Tamil Nadu General Sales Tax Act. Since the petitioner is challenging the assessment order, Section 38A cannot be invoked in this case.

10)For the foregoing reasons, it is clear that the petitioner who has shown indifference in not following the Rules and filing the appeal in time has thought fit to file this original petition to *safeguard her interest. There is no merit in this petition and the same is liable to be dismissed.*

11) In the result, O.P.No.52 of 2003 is dismissed. Consequently, O.M.P.No.32 of 2003 does not survive.

3. There is no representation on behalf of the Petitioner.

4. A reading of the order passed by the Tribunal makes it clear that the petitioner has not made out any case for interference under Article 226 of the constitution of India. Though, an Appeal under Section 31 of the Act was maintainable and the Petitioner filed Revision beyond the statutory period prescribed under Section 38 A before the 1st Respondent, in the absence of any documents being produced by the Petitioner before the 2nd Respondent to substantiate the claim, we do not find any reason to interfere with the order of the 1st Respondent Tribunal.

5. In such view of the matter, we are inclined to dismiss this Writ Petition.

6. Accordingly, this Writ Petition stands dismissed. No costs.

[S.V.N., J.] **[C.S.N., J.]**

26.10.2022

Index : Yes / No
Internet : Yes/No

To

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