IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No. 24061 of 2006 and
M.P.No.1 of 2006

Simplex Infrastructure Limited
(Formerly known as Simplex Concrete
piles (India) Ltd.,)
represented by its Management Adviser
J.S.Raghavan
New No.57 (Old No.38), Pantheon Road,
Egmore, Chennai- 600 008. ... Petitioner

-vs-

1. The State of Tamil Nadu
represented by the
Deputy Commissioner (CT)
Chennai (Central) Division,
Chennai- 600 006.

2.The Tamil Nadu Sales Tax
Appellate Tribunal,
(Additional Bench)
represented by its Secretary,
City Civil Court Building,
High Court Complex,
Chennai- 600 104. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the second Respondent herein in STRA No.1/2005 in STMP No.250/2003 in STA No.512/2003 dated 24.05.2006, quash the same and direct the Second Respondent to dismiss the State Appeal in STA No.512/2003 as barred by limitation.

For Petitioner : Mr. K.A.Parthasarathy

For Respondents : Mr.Haja Nazirudden
Additional Advocate General
Assisted by Mr.M.Venkateswaran
Special Government Pleader

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ORDER

S.VAIDYANATHAN, J.
AND
MOHAMMED SHAFFIQ, J.

This Writ Petition has been filed challenging the order of the 2nd Respondent dated 24.05.2006 in STRA No.1/2005 in STMP No.250/2003 in STA No.512/2003 on the limited ground that the Tribunal erred in condoning the delay by the State in filing the appeal before the Appellate Tribunal by reckoning the period of limitation from the date of service of the First Appellate Order on the Deputy Commissioner instead on the

Departmental representative.

2. The only question that may arise for consideration in this Petition is whether the date of service of the order of the Appellate Authority on the Deputy Commissioner for the purpose of filing an Appeal before the Appellate Tribunal is the starting point for reckoning the period of limitation or the date on which the order was served on the Departmental representative is the relevant date for calculating the period of limitation?

3. This Court in W.P.No.13223 of 2002 has held that the date for the purpose of reckoning the period of limitation would be the date on which the order was served on the Departmental representative and the Department should not await for the orders served on the Deputy Commissioner. In this regard, the relevant portion of the said order is extracted hereunder:

> *"3. The person who is entitled to represent the assessing authority is the departmental representative. The "departmental representative" is defined in Rule 3(cc) of the Tamil Nadu General Sales Tax Rules, 1959 as meaning "an Officer appointed by the State Government to receive on behalf of the assessing authority, notices issued by the Appellate Assistant Commissioner and generally to appear, act and plead on behalf of the assessing authority before the Appellate Assistant Commissioner."*
>
> *4. The role assigned to the departmental representative*

is akin to that of an Advocate. That representative is enabled to appear, act and plead on behalf of the assessing officer. That representative is also an officer of the Government. He represents the respondent in the appeal viz., the assessing authority.

5. ....

6. Section 31 of the Act does not require the Appellate Assistant Commissioner to serve the order rendered by him on appeal on the officer empowered by the Government to file an appeal under Section 36 of the Act, as that empowered officer has no role at all before the Appellate Authority. The Appellate Authority is only concerned with the assessing Officer and the departmental representative who represents him. The order copy is required to be served on him and when it is served, the period of limitation for the purpose of Section 36 of the Act can be said to begun."

A reading of the above portion of the Judgment makes it clear that the limitation for the purpose of filing an Appeal ought to be reckoned only from the date of serving of the order on the Departmental representative, if so, the appeal was admittedly barred by limitation. It may be relevant to note that the above order of this Court in W.P.No.13223 of 2002 has been followed on numerous occasions and we have not been informed that the Revenue has carried/ challenged the matter in appeal in any of those matters. In other words, the State has accepted the above order of this Court and thus it may not be desirable nor open for the State to even contend to the contrary.

4. In view of the same, this Writ Petition is allowed and the impugned order dated 24.05.2006 is set aside. No costs.

[S.V.N., J.] [M.S.Q., J.]
20.12.2022

Index: Yes / No
Internet: Yes / No
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S. VAIDYANATHAN,J.
and
MOHAMMED SHAFFIQ,J.

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To:
1. The Deputy Commissioner (CT)
   Chennai (Central) Division,
   Chennai- 600 006.

2.The Tamil Nadu Sales Tax
   Appellate Tribunal,
   (Additional Bench)
   represented by its Secretary,
   City Civil Court Building,
   High Court Complex,
   Chennai- 600 104.

W.P.No.24061 of 2006

20.12.2022