IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.2086 of 2022 and W.M.P.No.2243 of 2022

M/s.Kumaran Print (Firm)
Represented by its Partner P.Jayaseelan
No.5/174, Semmettu Thottam
Sulthanpet, Mangalam Road
Tirupur - 641 663. ...Petitioner

-Vs-

1.The Appellant Deputy Commissioner (ST)
GST Appeal, Salem, Erode.

2.The Assistant Commissioner (ST)
Rural Circle, Tirupur. ...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the impugned order dated 12.11.2021 in Appeal No.432/2021 in GSTIN 33AATFK4583B1Z8 so far as the petitioner herein is concerned and quash the same as illegal, arbitrary and devoid of merits.

For Petitioner : Mr.G.Sudhakar

For Respondents : Mr.N.R.R.Arun Natarajan
Special Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the records relating to the impugned order dated 12.11.2021 in Appeal No.432/2021 in GSTIN 33AATFK4583B1Z8 so far as the petitioner herein is concerned and quash the same as illegal, arbitrary and devoid of merits.

2. The petitioner's registration under the TNGST Act was cancelled by order dated 22.08.2019 by the concerned authority, as against which, if at all the petitioner wanted to agitate the issue by filing an appeal as provided under the Statute especially under Section 107 of the TNGST Act, he should have filed the same within three months period, which ended on 21.11.2019. Suppose the petitioner could not file an appeal within the three months period and if it is filed belatedly, such kind of delay can be condoned for one month, which means, after the three months limitation period was over, there is one month condonable period available before the appellate authority, where, if plausible reasons are given by the petitioner, such delay can be condoned and the appeal can be entertained.

3. Here in the case in hand, as against the order of cancellation dated 22.08.2019, the petitioner has not chosen to file an appeal either before 21.11.2019 ie., the limitation period or even before 21.12.2019 ie., within the one month condonable period. Instead, he was in long slumber and chosen to file the appeal only on 25.08.2021 almost nearly after two years.

4. The reason stated by the petitioner for such belated appeal which has been rejected through the impugned order dated 12.11.2021 by the first respondent appellate authority is that, due to the COVID-19 first wave and subsequently the second wave, the petitioner could not file the appeal in time. In this context, the learned counsel for the petitioner would contend that, due to the COVID-19 pandemic, the Hon'ble Supreme Court, by suo-motu proceedings, issued an order on 15.03.2020 extending the limitation period in respect of all such issues pending or to be filed before the judicial as well as quasi judicial and statutory authorities. Therefore, according the learned counsel for the petitioner, in view of such extended limitation from 15.03.2020 that has been time and again extended, the belated appeal filed by the petitioner should have been entertained by the first respondent appellate authority. Therefore, the present rejection order rejecting the appeal on the only ground of limitation by the appellate authority by the impugned order dated 12.11.2021 is against the said judgment of the Hon'ble Supreme Court and therefore, on that ground he seeks the indulgence of this Court against the impugned order.

5. Learned counsel for the petitioner would rely upon the order of a learned Single Judge of this Court made in W.P.Nos.24668 & 24669 of 2018 dated 19.09.2018 in the matter of

"Sri Durgai Amman HP Gas Gramin Vitrak, Vellore -Vs- The Assistant Commissioner (ST) (FAC), Arakkonam", wherein he relied upon Para 4 and 5 which reads thus,

" 4. The Assessing Officer, after issuing notices of proposal, passed the orders of assessment impugned in these writ petitions, by imposing tax and penalty. The Assessing Officer has found that the petitioner had neither filed monthly return nor annual return for both assessment years. It is also noted by the Assessing Officer that the petitioner having received notices of proposal, has not chosen to file their reply. Therefore, the Assessing Officer having left with no other option, concluded the assessment as stated supra. Though it is contended before this Court that there was no proper notices served on the petitioner, except making such vague averment, the petitioner has not substantiated such allegation, by placing any material facts. On the other hand, the Assessing Officer has categorically found that the notices of proposal were served on the petitioner on 22.11.2016 and 28.02.2017 respectively. Apart from the said fact, it is also seen that the Assessing Officer has given a factual finding that the petitioner has not filed either their monthly return or annual return for the respective assessment year. When such being the factual findings rendered by the Assessing Officer, in the absence of any other contra materials placed before this Court disputing such factual aspects, this Court is of the view that it is for the petitioner to approach the next fact finding authority, by filing a regular appeal, so that all the factual contentions raised by the petitioner, challenging the impugned assessment orders can be considered by the said fact finding authority viz., the First Appellate Authority.

5. Therefore, without expressing any view on the merits of the matter, both these writ petitions are disposed of, by granting liberty to the petitioner to file such statutory appeals within a period of three weeks from the date of receipt of a copy of this order, by complying with other statutory requirements for filing those appeals. If such appeals are filed within the

> time stipulated herein, the concerned Appellate Authority shall consider the appeals on its own merits and pass appropriate orders in accordance with law, without reference to the period of limitation. It is also made clear that this Court is not expressing any view on the merits of the assessment, as it is for the petitioner to canvass the correctness or otherwise of the same before the Appellate Authority, who in turn will consider such contentions on merits and in accordance with law. No costs. Connected miscellaneous petitions are closed."

6. By relying upon this judgment, the learned counsel for the petitioner would contend that, in the said case three weeks time has been given by the learned Judge while dismissing the writ petition, enabling the petitioner therein to approach the appellate authority. Therefore, such extended period of limitation by way of judicial order can very well be passed in this writ petition also, he contended.

7. I have considered the said submissions made by the learned counsel for the petitioner and also heard Mr.NRR.Arun Natarajan, learned Special Government Pleader appearing for the respondents.

8. It is a settled proposition of law that, when there is a limitation prescribed under the Statute and the Statute itself restricts the condonable period of limitation beyond which no judicial authority can extend the condonable period by way of a judicial order for any reason.

9. Here in the case in hand, the Statute prescribes the limitation of three months and thereafter it also fixed the condonable period of 30 days. Both this period was over as early as on 21.12.2019, whereas admittedly the appeal was filed only on 25.08.2021. Now the reason stated by the petitioner is that, due to COVID-19 pandemic he could not file an appeal and his belated filing of appeal is saved by the order passed by the Hon'ble Supreme Court in the suo-motu proceedings by an order dated 15.03.2020 extending the period of limitation by three months and the same was extended from time to time.

10. This Court is afraid to have such a proposition as projected by the learned counsel for the petitioner because, on the date the three months limitation period was over as well as the one month condonable period was over, absolutely there was

no pandemic in this country. If at all the pandamic struck sometime in March 2020, based on which if the Supreme Court came forward to pass an order to extend the limitation period on 15.03.2020, that would be made applicable only from 15.03.2020. Therefore, it cannot be stretched upon to make it retrospectively from November or December 2019, as that kind of proposition now being projected by the learned counsel for the petitioner is a far stretch of any plausible or acceptable reason. Therefore, this Court cannot accept such reason.

11. Moreover, insofar as the judgment cited by the learned counsel for the petitioner is concerned, where the assessment order was under challenge in the writ petition which was decided by the learned Judge on merits stating that prima facie on factual matrix, the writ petition cannot be entertained. However, while dismissing the writ petition, the learned Judge, in view of the pendency of the writ petition all along for some time, to save the limitation as by the time the limitation would have been over, was pleased to grant three weeks time to the petitioner in the case of filing an appeal before the appellate authority, which is the next fact finding authority to go into all these facts.

12. Therefore, the facts of the case of the said judgment is entirely different from the facts of the present case. Here the issue is as to whether the statutory limitation prescribed even for condoning the delay can be extended by an order of a Court of Law. In this case, absolutely no reason is available for this Court to venture into such an attempt because, admittedly the condonable period was over by 21.12.2019 and admittedly the appeal was filed only on 25.08.2021. The Supreme Court order has come only on 15.03.2020. Therefore, before 15.03.2020 within the condonable period, admittedly the petitioner has not chosen to file the appeal, nor the petitioner has filed any writ petition before this Court during that period and the same has not been kept pending before this Court. When that being so, the proposition projected in the said case as cited by the learned counsel for the petitioner would not be in any way helpful to the petitioner to advance his case. Therefore, for that reason also, the present plea made by the petitioner cannot be entertained.

13. For all these reasons, this Court has no hesitation to hold that the petitioner cannot have any successful challenge against the impugned order, where the appeal filed by the petitioner, for the said reason of want of limitation and also beyond the condonable period of delay was dismissed, of course

rightly. Hence, the writ petition fails and accordingly it is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

KST
To
1.The Appellant Deputy Commissioner (ST)
GST Appeal, Salem, Erode.

2.The Assistant Commissioner (ST)
Rural Circle, Tirupur.

+1 CC to The Special Government Pleader (T) sr 9055
+1 CC to M/s. James Victor Rajkumar, Advocate sr 8720.

W.P.No. 2086 of 2022

PMK(CO)
SP(08/03/2022)