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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM

THE HONOURABLE MR.JUSTICE **S.VAIDYANATHAN**
and
THE NONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P. Nos.49158 & 49159 of 2006
and M.P. Nos.1 of 2006

M/s.Surya Chemical Products
Represented by Ms.R.Rajamarichamy
Power of attorney holder
G-14, Anna Nagar (East)
Chennai - 102 .. Petitioner in both WPs

Vs.

1.The Sales Tax Appellate Tribunal
(Main Bench)
City Civil Court Buildings
Chennai - 104

2.The Deputy Commissioner (C)
Chennai (Central) Division
Greams Road, Chennai - 6

3.The Commercial Tax Officer
Amaindakarai Assessment Circle
Kuralagam Annexe, Chennai - 108 .. Respondents in both WPs

* * *

Prayer in W.P. Nos.49158 & 49159 of 2006 : Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of certiorari, to call for the records of the first respondent in T.M.P. Nos.355 & 354 of 2005 in S.T.A. Nos.581 & 582 of 2002 dated 02.11.2005 and quash the same as being invalid and illegal.

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For Petitioner in both WPs : Mr.C.Venkatraman

For Respondents in both WPs : Mr.V.Prashanth Kiran, Government Advocate

* * *

COMMON ORDER

S.VAIDYANATHAN, J.
AND
C.SARAVANAN, J.

The petitioner has filed these writ petitions against the common order passed by the first respondent/Sales Tax Appellate Tribunal in applications filed by the petitioner under Section 55(1) of the TNGST Act, seeking to rectify the order dated 21.01.2004 of the Appellate Tribunal in S.T.A. Nos.581 and 582 of 2002 for the Assessment Years 1992-93 & 1993-94.

2. The specific case of the petitioner is that the appeals filed by the respondent/Commercial Tax Department before the first respondent/Tribunal in S.T.A. Nos.581 & 582 of 2002 for the respective assessment years, were beyond the condonable period of limitation and therefore, these appeals ought not to have been entertained by the Tribunal. Under these circumstances, the petitioner has filed a petition under Section 55(1) of the TNGST Act, which has been rejected by the Tribunal vide its common order, impugned herein.

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3. Learned counsel appearing for the petitioner submits that, as regards the Assessment year 1992-93 is concerned, the petitioner had also filed an appeal against the final order dated 21.01.2004 vide Tax Case (Revision) No.173 of 2009 and that the tax case revision came to be allowed by this court by its order dated 25.06.2018 whereby, the order of the Appellate Assistant Commissioner (CT), dated 16.05.2001 made in A.P. No.180/99 for the Assessment year 1992-93 has been modified and remitted back to the original authority to ascertain whether indeed the petitioner has sold the business to a third party on 27.11.1992.

4. The learned Government Advocate appearing for the Commercial Tax Department on the other hand, would submit that the writ petition is devoid of merits and is liable to be dismissed, as the appeals filed before the Tribunal were in time. It is further submitted that the applications for condoning the delay were filed before the Tribunal and that the petitioner had not filed any counter and therefore, the Tribunal, considering the facts on record, condoned the delay and admitted the appeals and consequently, numbered them as A.P. Nos.179/1999 and 180/1999 for the Assessment years 1993-94 and 1992-93.

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5. We have considered the arguments advanced by the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the Commercial Tax Department and perused the materials available on record.

6. We are of the view that for the Assessment year 1992-93, the Division Bench of this court, by its order dated 25.06.2018 made in Tax Case (Revision) No.173 of 2009, has remitted the case back to the original authority and thereby, upheld the order of the Appellate Commissioner in A.P. No.180/1999 dated 16.05.2001.

7. We do not wish to take a different stand. Consequently, these writ petitions are allowed and the cases are remitted back to the third respondent to pass appropriate orders in terms of the order dated 16.05.2001 in A.P. Nos.179 & 180 of 1999. Considering the fact that the dispute pertains to Assessment years 1992-93 and 1993-94, the third respondent shall endeavour to complete the *de novo* proceedings, within a period of six months from the date of receipt of a copy of this order. No costs.

[S.V.N., J.] [C.S.N., J.]
19.10.2022

Asr

Index : Yes/No

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4.The Government Pleader
High Court, Madras

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and
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