IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.9753 of 2022
and
W.M.P.No.9469 of 2022

M/s.Shanmuga Construction,
Represented by its partner
Mr.S.Shanmugam
19/3, Sathy Main Road, Near Kannan Petrol Bunk,
Erode – 638004. ...Petitioner

-Vs-

1. Appellate Deputy Commissioner (S.T.),
C.T. Buildings, Brough Road,
Erode.

2. Assistant Commissioner ST
Chithode Assessment Circle, C.T.Buildings,
Brough Road, Erode. ...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the first respondent and quash the impugned notice under Section 51 of the Tamil Nadu Value Added Tax Act, 2006 ("Act") in TNVAT No.33446308099 in Notice No.617/2020/A dated 01.02.2022 ["impugned notice"] and direct the first respondent to adjudicate the appeal filed under Section 51 in Taxpayer Identification No.33446308099 on merits, after giving the petitioner an opportunity of being heard.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mr.Richardson Wilson, AGP

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus, to quash the impugned notice under Section 51 of the Tamil Nadu Value Added Tax Act, 2006 ("Act") in TNVAT No.33446308099 in Notice No.617/2020/A dated 01.02.2022 ["impugned notice"] and direct the first respondent to adjudicate the appeal filed under Section 51 in Taxpayer Identification No.33446308099 on merits, after giving the petitioner an opportunity of being heard.

2. The petitioner was a dealer under the erstwhile Tamil Nadu Value Added Tax Act,2006 (in short “the Act”).

3. In respect of the assessment year 2016-17, an assessment order has been passed on 28.08.2021, as against which, the petitioner dealer filed an appeal before the Appellate Authority on 09.09.2021 under Section 51(1) of the Act.

4. The said appeal was returned on 30.09.2021 on the alleged ground that, in column 8 (i) of the appeal form, what has been mentioned as disputed tax is very meager comparing with the entire tax dispute payable by the petitioner/dealer as per the assessment order of the Revenue and therefore, for the remaining tax i.e., alleged undisputed tax, entire such undisputed tax should have been paid, then only the appeal would be entertained and citing the said reason on 30.09.2021, it was returned.

5. However, subsequently the petitioner, after realizing his mistake that in column 8 (i) of the form instead of disputing the entire tax due as demanded by the Revenue through the assessment order, they have wrongly quoted the disputed amount and therefore made a rectification and represented the appeal on 24.01.2022. However, this time, the Appellate Authority has again returned the same.

6. However, this time, the reason given by the Appellate Authority is that 25% pre-deposit for the entire disputed amount should have been paid within the time i.e., 30 + 30 days and the said pre-deposit since has not been made within the stipulated period of 30 + 30 days, on that ground, this time it is returned through the impugned order dated 01.02.2022.

7. Assailing the said order, Mr.N.V.Balaji, learned counsel appearing for the petitioner would contend that in the earlier return, a different reason was given, of course, that was because of the mistake committed by the petitioner/dealer in filling up the column 8 (i) where instead of putting the entire tax due as disputed tax against which only, an appeal was filed, it has wrongly clubbed the figure. When the same has been rectified, now the reasons stated by the Appellate Authority is that the 25 % pre-deposit has not been paid in time even though, the same along with the representation has been paid by the petitioner/assessee.

8. In this context, the learned counsel for the petitioner would rely upon the orders passed by the Hon'ble Supreme Court and various High Courts including our High Court with regard to the limitation period extended for various proceedings due to Covid-19 first and second wave and therefore, the said reason now given through the impugned order by the Appellate Authority for rejecting or returning

the appeal of the petitioner citing the reason that, within 60 days, the pre-deposit of 25% of the disputed tax has not been paid may not be justifiable.

9. Heard Mr.Richardson Wilson, learned Additional Government Pleader appearing for the respondents, who would submit that no doubt, the petitioner dealer at the time of filing the appeal has not disputed or admitted the tax liability to the extent of Rs.3,88,398/- and he only disputed Rs.70,830/- and therefore, if at all Rs.70,830/- is alone appealed, the remaining admitted tax of Rs.3,88,398/- should have been paid, since the same was not paid, first time it was returned by the Appellate Authority.

10. However, it was represented the figure that has been changed and the entire amount has been disputed by the dealer by representing the appeal on 24.01.2022. In the meanwhile, the time given for paying 25% pre-deposit already lapsed. Therefore, on that ground that the petitioner/dealer has not deposited 25% pre-deposit, this time appeal has been rejected or returned through the impugned order dated 01.02.2022. Therefore, it has to be sustained, he contended.

11. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed on record.

12. Insofar as the present impugned order dated 01.02.2022 is concerned, the only reason stated by the Appellate Authority for returning the appeal now represented on 24.01.2022 by the petitioner is that the pre-deposit of 25% though has been made now was not deposited within the permitted limitation period of 30 + 30 days. Therefore, on that ground alone now the appeal has been returned.

13. In this context, it has to be taken note of the fact that due to Covid-19 situation, the entire proceedings before various forums could not be met in time and therefore, there was a justification on the part of the litigants to claim for extending the period. In this context, Courts have taken the view by following the extension of limitation order in the Suo Motu proceedings of the Hon'ble Supreme Court in Suo Motu PIL dated 10.01.2022 that those time frame fixed on various statute, can be extended for the entire Covid-19 first and second wave period.

14. If that position is taken into account, the pre-deposit now has been made by the petitioner/dealer, of course, belatedly should be accepted by the Appellate Authority as a pre-deposit for entertaining appeal and to decide the same on merits.

15. In that view of the matter, this Court feels that the reason stated in the impugned order for not entertaining the

appeal of the petitioner may not be justifiable. Accordingly, this writ petition is disposed of with the following order:

> "That the impugned order is set aside and the matter is remitted back to the respondent, where the appeal filed by the petitioner, if it is represented once again within a period of two weeks from the date of receipt of a copy of this order, then it has to be entertained and the same has to be decided on merits and in accordance with law, if is otherwise in order except the limitation issue."

16. The petitioner sought for the impugned order, which shall be returned to the petitioner, enabling him to file an appeal before the Appellate Authority.

17. Hence, Registry is directed to return the original impugned order to the writ petitioner, after retaining the photocopy of the same and after getting due acknowledgment from the counsel on record.

18. With these observations and directions, this Writ Petition is disposed of. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Anu/mp

To

1.The Appellate Deputy Commissioner (S.T.),
C.T. Buildings, Brough Road, Erode.

2.The Assistant Commissioner ST
Chithode Assessment Circle, C.T.Buildings,
Brough Road, Erode.

Copy to:

The Section Officer,
E.R.Section, High Court, Madras.
(To return the original impugned order)

+1cc to Special Government Pleader (Taxes) SR. No. 26985

W.P.No.9753 of 2022

AJB (CO)
PR (13/07/2022)