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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.06.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.13404, 13409, 13413, 13417 & 13421 of 2019
&
W.M.P.Nos.13512, 13514, 13517, 13519, 13522 & 13526 of 2019

R.Prabhu,
Partner,
Tvl.Rathinam Enterprises,
No.111, Thoppai Street, Royapuram,
Chennai – 600 013. .... Petitioner in all WPs

Vs.

The Assistant Commissioner (ST),
Royapuram Assessment Circle,
Kummalammankoil Street,
Chennai – 600 081. .... Respondent in all WPs

Prayer in W.P.No.13404 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in TIN No.33840041194/2011-12, dated 28.03.2018 on the file of the respondent and quash the same as illegal and contrary to law and direct the respondent to follow the procedure under the TNVAT Act.

Prayer in W.P.No.13409 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in TIN No.33840041194/2012-13, dated 28.03.2018 on the file of the respondent and quash the same as illegal and contrary to law and direct the respondent to follow the procedure under the TNVAT Act.

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<u>Prayer in W.P.No.13413 of 2019</u>: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in TIN No.33840041194/2013-14, dated 28.03.2018 on the file of the respondent and quash the same as illegal and contrary to law and direct the respondent to follow the procedure under the TNVAT Act.

<u>Prayer in W.P.No.13413 of 2019</u>: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in TIN No.33840041194/2014-15, dated 28.03.2018 on the file of the respondent and quash the same as illegal and contrary to law and direct the respondent to follow the procedure under the TNVAT Act.

<u>Prayer in W.P.No.13421 of 2019</u>: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in TIN No.33840041194/2015-16, dated 28.03.2018 on the file of the respondent and quash the same as illegal and contrary to law and direct the respondent to follow the procedure under the TNVAT Act.

In all W.Ps.
For Petitioner : Mr.S.Selvamany

For Respondent : Mr.Richardson Wilson
Additional Government Pleader

<u>ORDER</u>

These writ petitions, challenge orders of assessment passed in relation to five periods, 2011-12 to 2015-16, all dated 28.03.2018 in terms of the provisions of Tamil Nadu Value Added Tax Act, 2006 (in short 'Act'). I am of the view that the writ petitions are misconceived and not maintainable for the reason that they have been filed only on 26.04.2019 more than one year from the passing of the impugned orders.

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2. The statutory time limit for filing of first appeal under Section 51 of the Act is 30 days. A further period of 30 days is provided, within which time the appeal may be presented with an application for condonation, to be considered on merit and at the discretion of the Assessing Authority. In this case, the statutory limit provided, including for condonation of delay is long gone.

3. The Hon'ble Supreme Court has held in a slew of judgments, the most recent being *Assistant Commissioner (CT) Vs.M/s.Glaxo Smith Kline Consumer Health Care Limited* [2020 36 GSTL 305] held that a challenge to an order of assessment is not liable to be entertained if it is made beyond the period of statutory limitation. Though Article 226 of the Constitution of India does provide for room to the High Court to look into the reasons for the delay and condone the same, such discretion must be exercised sparingly and having regard to the reasons causing such delay.

4. I have, in a batch of matters in *S.K.S. Tex Vs. The Assistant Commissioner (ST) (FAC)* W.P.No.14656 of 20121 order dated 16.07.2021 and batch, applied the above ratio to decide the challenge to several orders of assessment. The reasons for delay have been examined as a preliminary issue and only in the event that there was sufficient reasons adduced justifying the delay, have I proceeded to hold the writ petition maintainable.

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5. Adopting the same approach in the writ petition, I find that the impugned order of assessment is dated 28.03.2018. An appeal ought to have been filed on or before 23.07.2018 as the order has been served upon the petitioner on 23.06.2018. The period of limitation, including the period for which delay may be condoned, expires 60 days after the date of service of the notice. The present writ petitions have been filed only on 26.04.2019 with a delay of nine months (approx).

6. I have carefully perused the writ affidavits and find no reference whatsoever to delay, leave alone an explanation therefor. Learned counsel also has no explanation to put forth in in this regard. In such circumstances, the writ petitions are held non-maintainable, and dismissed as such. Connected writ miscellaneous petitions are closed. No costs.

14.06.2022

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Index : Yes / No
Speaking Order / Non Speaking Order

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To

The Assistant Commissioner (ST),
Royapuram Assessment Circle,
Kummalammankoil Street,
Chennai – 600 081.

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Dr.ANITA SUMANTH,J.
nst

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