IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: **14.12.2022**

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.33446, 33447, 33448, 33450, 33452 and 33453 of 2022

W.P.Nos.33446 of 2022

M/s.Mohan Industries
Represented by its Proprietor
Mohan Kumar
63, South Sathipattu
Panruti Taluk
Cuddalore District – 607 106 .. Petitioner

Vs.

1. The Appellate Deputy Commissioner of Commercial Tax
O/o.The Appellate Deputy Commissioner of Commercial Tax
Manjakuppam
Cuddalore – 607 001

2. The Commercial Tax Officer
O/o.The Commercial Tax Officer
Panruti (Rural), Panruti
Cuddalore District ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus by calling for the entire records pertaining to impugned notice in Na.Ka.A1/1139/2022 dt.26.09.2022 and quash the same and consequently direct the 1st respondent to adjudicate the appeal dated 06.09.2022 filed by the petitioner.

For Petitioner : Mr.B.Thirunavukkarasu
in all W.Ps

For Respondents : Mr.V.Prashanth Kiran
Government Advocate (Taxes)
in all W.Ps

COMMON ORDER

This common order will govern the captioned six writ petitions.

2. Mr.B.Thirunavukkarasu, learned counsel on record for petitioner in all six writ petitions is before this Court.

3. Short facts are that writ petitioner is a dealer under erstwhile 'Tamil Nadu Value Added Tax Act, 2006 (Act No.32 of 2006)' [hereinafter 'TNVAT Act' for the sake of brevity, convenience and clarity]; that the writ petitioner is in the business of dealing in cashew shell and oil; that there was a deemed assessment under Section 22(2) of TNVAT Act; that on 26.02.2013 and 27.02.2013 Enforcement Wing of the respondent visited the premises of the writ petitioner resulting in tax

levy and imposition of penalty; that the writ petitioner assailed the same by way of a writ petition in this Court vide W.P.No.25511 of 2016; that a Hon'ble Single Judge in and by order dated 22.07.2016 directed issue of fresh notice under Section 27 of TNVAT Act and also directed the petitioner-dealer to appear before the Original Authority (second respondent) in captioned writ petitions; that post writ petitions, the Original Authority made orders; that the writ petitioner-dealer has assailed the orders by way of statutory appeals under Section 51 of TNVAT Act; that the statutory appeals have been returned as not maintainable owing to being outside the prescribed period of limitation and the condonable period of limitation, namely 30 days from the date of receipt of orders by the writ petitioner and a further 30 days therefrom respectively; that assailing the return of the appeal (certiorari limb) and seeking a mandamus qua the first respondent (Appellate Authority) to hear the appeals, captioned writ petitions have been filed in this Court on 30.11.2022; that it is to be noted that the captioned matters pertain to 6 assessment years, namely AY 2008-2009 to 2013-14 (six successive years); that further granular particulars will be set out infra in this order.

4. Owing to the narrow compass and acute angle on which the captioned writ petition turns Mr.V.Prashanth Kiran, learned Government Advocate (Taxes) accepted notice and all six main writ petitions were taken up with the consent of both sides. To be noted, considering the contention that falls for consideration, a counter affidavit from the Revenue is really not necessary for disposal of captioned writ petitions. Notwithstanding very many averments in the writ affidavits, learned counsel for writ petitioner predicates his argument on one sheet anchor submission and that is, the writ petitioner received the Assessment Orders made by the second respondent (Original Authority) on 11.08.2022 and preferred the statutory appeals under Section 51 of TNVAT Act on 06.09.2022, which is within 30 days from the date of receipt of orders.

5. Responding to this, learned Revenue counsel on instructions and from the copies of the records available submitted that post aforementioned 22.07.2016 order of another Hon'ble single Judge in W.P.No.2251 of 2016 and W.M.P thereat, the writ petitioner was given a pre-revision notice. This pre-revision notice is dated 20.12.2016. This pre-revision notice was duly served on the writ petitioner, the respondent

received acknowledgement dated 27.12.2016. It was submitted that the writ petitioner did not respond to this notice. Therefore, the second respondent proceeded with Section 27 of TNVAT Act legal drill and made six separate orders dated 27.04.2017, despatched the same on same day and all six orders were received by the writ petitioner on 28.04.2017. Learned Revenue counsel adds that thereafter the writ petitioner had applied for a certified copy of 6 Assessments orders, all dated 27.04.2017, the applications for certified copies were processed and certified copies were made available to the writ petitioner on 11.08.2022 but that cannot be the reckoning date.

6. Learned Revenue counsel produced the postal acknowledgement card to demonstrate that 27.04.2017 Assessment Orders were duly served on the writ petitioner on 28.04.2017 and a scanned reproduction of one acknowledgement card is as follows:

TIN 3339 2006-07, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14

प्राप्ति स्वीकृति (रसीद) ACKNOWLEDGEMENT

* Received a Registered / Insured Letter/Postcard/Packet/Parcel

Addressed to (Name)

† Insured for Rupees

Date of delivery

Signature of addressee

DEPARTMENT OF POSTS, INDIA

Name stamp of office of posting

PIN

7. A scanned reproduction of the vakalatnama is as follows:

43

In the High Court of Judicature at Madras

W.P No. 33446 of 2022

No. of 20 on the file of the

Mohan Industries

... Petitioner

Versus

The Regional Deputy Commissioner of Commercial Taxes and another

...Respondents

I/We

Mohan Industries

In the above Petition / Appeal do hereby appoint and retain

B. THIRUNAVUKKARASU, R.SRIRAM, S.A. ABDUL KHADER

Advocates of the High Court to appear me/us in the above Appeal/Petition and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein including all applications for return of documents or the receipt to any moneys that may be payable to me/us in the said Appeal/Petition and also in appeal under Section 15 of the Letters Patent and application for leave to the Supreme Court of India and in all applications for review Judgement.

I Certify that the contents of this vakalat at were read out and explained in my presence to the Executant who appeared perfectly to understand the same and made his / her their signature in my presence.

For MOHAN INDUSTRIES

Proprietor.

Executed before me this 23 day of Nov 2022

ACCEPTED

Counsel for Petitioner

The address for service of the said

MADRAS

No. 5, 302, ... Complex, 3rd Floor, ... Chennai - 1

46

8. This Court compared the signature in the acknowledgement card with the signature in the vakalatnama. Even to the naked eyes, it is explicit that the signatures are the same. This means that the Assessments Orders qua Section 27 TNVAT Act legal drill was duly served on the writ petitioner on 28.04.2017. The sequitur is, the appeals preferred by the writ petitioner (admittedly) on 06.09.2022 are clearly beyond the prescribed period and condonable period of 30 days from the date of receipt of the order and 30 days thereafter.

9. There is yet another facet of the matter. The second proviso to Section 51 of TNVAT Act mandates a pre-deposit as a condition precedent for an appeal and that pre-deposit is 25% of the admitted tax. There is nothing before this Court to demonstrate that this condition has been complied qua 06.09.2022 appeal. In any event, this does not impact the dispositive reasoning but it is only a buttressing facet of the matter. 06.09.2022 appeals filed by the writ petitioner are clearly out of time, well beyond the prescribed period and condonable period. Therefore, this Court finds no ground to interfere with the impugned order.

10. The sum sequitur of discussion and dispositive reasoning set out supra is all 6 captioned writ petitions fail and the same are dismissed. There shall be no order as to costs.

14.12.2022

Index: yes/no
gpa

To

1. The Appellate Deputy Commissioner of Commercial Tax
   O/o.The Appellate Deputy Commissioner of Commercial Tax
   Manjakuppam
   Cuddalore – 607 001

2. The Commercial Tax Officer
   O/o.The Commercial Tax Officer
   Panruti (Rural), Panruti
   Cuddalore District

M.SUNDAR, J.,

gpa

W.P.Nos.33446, 33447, 33448, 33450, 33452 and 33453 of 2022

14.12.2022