BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2022

CORAM

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

W.P(MD).No.9034 of 2022
and
W.M.P(MD).No.6488 of 2022

Tvl. The Tirunelveli District Co-operative,
Milk Producers Union Limited,
Rep. by its General Manager,
P.Sundaravadivelu,
Tyd.245, Reddiyapatti Road,
Tirunelveli. ... Petitioner

**Vs.**

1.The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench),
Commercial Taxes Building,
Madurai-625 020.

2.The State of Tamil Nadu,
Rep. by the Joint Commissioner (ST),
Tirunelveli Division,
Tirunelveli.

3.The Assistant Commissioner (ST),
Palayamkottai Assessment Circle,
Tirunelveli. ... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the first respondent in Madurai Tribunal Appeal No.387 of 2002 dated 09.11.2017 and quash the same as arbitrary, invalid and against the principles of natural justice and also to direct the first respondent to take up the appeal on file and to dispose of the same on its merits as per the provisions of the Tamil Nadu General Sales Tax Act, 1959.

For Petitioner : Mr.K.Srinivasan
For Respondents : Mr.M.Prakash
Additional Government Pleader

**ORDER**

This writ petition has been filed for a writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the first respondent in Madurai Tribunal Appeal No.387 of 2002 dated 09.11.2017 and quash the same as arbitrary, invalid and against the principles of natural justice and also to direct the first respondent to take up the appeal on file and to dispose of the same on its merits as per the provisions of the Tamil Nadu General Sales Tax Act, 1959.

2. Earlier, the petitioner has suffered an assessment order, dated 20.12.1999 of the Commercial Tax Officer. Aggrieved by the same, the petitioner had preferred an appeal in A.P.No.457 of 2001 before the Appellate Assistant Commissioner (C.T.). The said appeal was dismissed vide order, dated 09.04.2002. Thereafter, the petitioner filed second appeal before the Tamil Nadu Sales Tax Appellate Tribunal in Appeal No.387 of 2002 but allowed the appeal to dismissed for default on 09.11.2017. However, no steps was taken by the petitioner to set aside the order immediately. The petitioner has now approached this Court when the Department sought to recover the amount due in view of the dismissal of the petitioner's aforesaid appeal before the Tamil Nadu Sales Tax Appellate Tribunal.

3. The learned counsel for the petitioner has relied on the decision of this Court in W.P(MD).No.4975 of 2021, dated 09.03.2021 wherein, the Court referred to the decision of the Hon'ble Supreme Court in the case of **Rafiq and others Vs Munshilal and others** reported in **AIR 1981 SC 1400** and held that the litigant ought not to suffer on account of the fault or omission of the part of the counsel. The learned counsel for the petitioner further submits that similar orders may be passed. It is further submitted that the petitioner is a Co-operative Milk Producers Union Limited Tamil Nadu body and no prejudice will be caused to the respondents as the petitioner is still carrying on the business. The petitioner has a very good case on merits and therefore the matter may be remitted back to the respondents.

4. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

5. It appears that the petitioner was in arrear for a sum of Rs.11,21,828/- for the assessment year 1993-1994 and further sum of Rs.17,01,965/- for the subsequent assessment year. However, the dispute pertains to the present assessment year was Rs.11,62,328/- which consists of tax, sub charge, additional sales tax and penalty.

6. The petitioner would have deposited 25% of the tax demanded at the stage of first appeal and further amount subject to the disposal of the aforesaid petition by the Commissioner (Appeals). No

doubt, the petitioner has been negligent in not following this case before the Tribunal. The fact also remains that the appeal was dismissed for default as the counsel engaged for the petitioner failed to appear before the Tribunal. The appeal has been dismissed for default in terms of Regulation 9 (1) of the Tamil Nadu Sales Tax Appellate Tribunal Regulations, 1959.



7. Considering the fact that the petitioner is a Government body, I am inclined to dispose this writ petition by quashing the impugned order, dated 09.11.2017 and remit the case to the first respondent Tribunal. The first respondent Tribunal shall dispose the appeal on merits as expeditiously as possible preferably within a period of six months from the date of receipt of copy of this order. The petitioner is however directed to pay a sum of Rs.50,000/- to the credit of the Government within a period of four weeks from the date of receipt of copy of this order. It is needless to state that aforesaid amount directed to be deposited will be subject to final order to be passed in the appeal by the Tribunal.

8. The writ petition stands disposed of in terms of the above observations. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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To

1.The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench),
Commercial Taxes Building,Madurai-625 020.

2.The Joint Commissioner (ST),
The State of Tamil Nadu,
Tirunelveli Division,Tirunelveli.

3.The Assistant Commissioner (ST),
Palayamkottai Assessment Circle, Tirunelveli.

+1 CC to M/s.A.SATHEESH MURUGAN, Advocate ( SR-22709[F] dated 29/04/2022 )
+1 CC to M/s.SPL.GP ( SR-23335[F] dated 04/05/2022 )

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