BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.11.2022

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**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

W.P(MD).No.13725 of 2022

Tvl.K.S.Company,
Represented by its Partner,
S.Sudha,
No.4/150, Lake Area Main Road,
Mattuthavani,
Madurai. ... Petitioner

**Vs.**

1.The Secretary,
The Tamil Nadu Sales Tax
Appellate Tribunal (Additional Bench),
Madurai-20.

2.The Assistant Commissioner (CT),
Tallakulam Assessment Circle,
Madurai-20. ...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 records to quash the order of the 1st Respondent passed in Madurai Tribunal State Miscellaneous Petition No.88/17, dated 04.10.2021 as without authority of law, illegal and invalid and further direction to the 1st Respondent to reject the State Appeal in MTSA No.478 of 2021, numbered pursuant to the aforesaid order dated 04.10.2021, as barred by limitation and filed beyond the period for condonation of delay as prescribed under the Proviso to Section 58(1) of Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.A.Chandrasekaran

For Respondents : Mr.M.Ramesh
Government Advocate

**ORDER**

This writ petition is filed challenging the order of the 1st Respondent in Miscellaneous Petition No.88 of 2017, dated 04.10.2021 and further directing the 1st Respondent to reject the State Appeal in MTSA No.478 of 2021, numbered pursuant to the aforesaid order, dated 04.10.2021, as barred by limitation and filed beyond the period for condonation of delay as prescribed under the Proviso to Section 58(1) of Tamil Nadu Value Added Tax Act, 2006.

2. It is the case of the Petitioner that the orders of the Appellate Authority were served on the Departmental Representative (ST), Madurai on 05.07.2016 and on the Assistant Commissioner (ST), Joint Commissioner ST), Madurai on 06.07.2016. It is submitted that the appeal was preferred by the State only on 03.03.2017. If the limitation is reckoned from the date on which the orders were received by the Departmental Representative on 05.07.2016, by the date the appeal was filed, it would be 241 days from the date of receipt of the said order and thus barred by limitation inasmuch as the appeal before the Tribunal ought to be filed within a period of 120 days. The Tribunal has the power to condone the delay of further period of 120 days, in

all, 240 days. However, the appeal having been preferred only on 03.03.2017, it would be 241 days, and thus it is beyond the jurisdiction of the Tribunal to condone the delay.

3. To the contrary, it is submitted by the learned Government Advocate for the Respondents that limitation would start running only from the date on which the Joint Commissioner(ST), Madurai, has been served with appeal order on 08.07.2016, though the certificate issued by the Appellate Deputy Commissioner would indicate that the Joint Commissioner(ST), Madurai was served with appeal order on 06.07.2016. The above question need not detain this Court as it stands resolved/covered by order of this Court. In this regard, reliance was sought to be placed on the following judgments:

(a) ***M/s.Arihant Electrical and Refrigeration Centre Vs The Secretary, Tamil Nadu Sales Tax Appellate Tribunal*** in W,P.No.13223 of 2022 . Relevant portion reads as under:

> *"6.Section 31 of the Act does not require the Appellate Assistant Commissioner to serve the order rendered by him on appeal on the Officer empowered by the Government to file an appeal under Section 36 of the Act, as that empowered Officer has no role at all before the Appellate Authority. The Appellate Authority is only concerned with the assessing officer and the departmental representative who represents him. The order copy is required to be served on him and when it is served, the period of limitation for the purpose of Section 36 of the Act can be said to have begun.*

*7.The generous period of limitation provided for the Government under Section 36 of the Act is not be further extended by postponing the starting point for the computation of the period of limitation to the date on which the Deputy Commissioner becomes aware of the order made by the Appellate Assistant Commissioner."*

(b) ***State of Tamil Nadu Vs R.K.Herbal Private Limited and others*** reported in ***(2004) 136 STC 632 (Mad)***. Relevant portion reads as under:

"5. Time will begin to run from the date on which the copy is served on the State representative. It is for the State representative to co-ordinate with the concerned Deputy Commissioner and ensure that the revision is filed within the time allowed under Section 38."

(c) ***M/s.Indian Steel and Allied Products Vs The Deputy Commissioner Tax Officer (Addl.) and others*** in W.P.No.29855 of 2006. Relevant portion reads as under:

*"7. It is seen that without considering the counter affidavit, especially, paragraph 8, wherein, the delay in filing the appeal is calculated to the tune of 134 days, the Tribunal passed the order. Furthermore, the Honourable Division Bench of this Court, in the decisions reported in (i) 2005-06 (11) TNCTJ 79 (M/s. Arihand Electrical and Refrigeration Centre Vs. The Secretary, Tamilnadu Sales Tax Appellate Tribunal) and (ii) 136 STC 632 State of Tamilnadu Vs. R.K. Herbal (P) Ltd and others, referring section 36 of TNGST Act has held that the date of service of the order of the Appellate Tribunal to the State's representative as the actual date to be taken into consideration for calculating the period of limitation and if that is being taken into consideration, it is apparent that the filing of appeal is beyond the condonable period and hence, the impugned order in this Writ Petition deserves to be set aside.*

4. In view of the above judgments, the impugned order of the Tribunal is unsustainable inasmuch as admittedly the appeal is filed beyond 240 days. Thus, the impugned order of the Tribunal, dated 04.10.2021 is set aside. The writ petition stands disposed of on the above terms. No costs.

**23.11.2022**

Index : Yes / No
Internet : Yes/ No
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To

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**MOHAMMED SHAFFIQ, J.**

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