BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2022

CORAM

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**
and
THE HONOURABLE MR.JUSTICE **J.SATHYA NARAYANA PRASAD**

W.A.(MD) Nos.1613, 2213, 2218 to 2220 and 2252 of 2021, 129, 170, 183, 184, 201, 202, 206 and 207, 1147 to 1151 of 2022
and
C.M.P.(MD) Nos.6928, 10940, 11013 to 11015, 11247 of 2021, 1274 1700, 1771, 1772, 1957, 1960, 1989, 1990, 9036 to 9038, 9040, 9039 of 2022

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner
of Commercial Taxes.
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Commercial Tax Officer,
South Avani Moola Street Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai – 625 020. ... Appellants/Respondents
in W.A.(MD) No.1613 of 2021

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner
of Commercial Taxes.
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Assistant Commissioner (CT),
Tamil Sangam Road Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,

Madurai. ... Appellants/Respondents in W.A.(MD) Nos.2213 of 2021

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South Avani Moola Street Circle,
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Dr.Thangaraj Salai,
Madurai – 625 020. ... Appellants/Respondents in W.A.(MD) No.2213 of 2021

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner
of Commercial Taxes.
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Commercial Tax Officer,
Paramakudi Assessment Circle,
Commercial Taxes Building,
No.3/103, Madurai Mandapam Main Road,
Thirunagar, Theligathanallur,
Paramakudi,
Ramnad District. ... Appellants/Respondents in W.A.(MD) Nos.2218 to 2220 & 2252 of 2021

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner
of Commercial Taxes.
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Assistant Commissioner (CT),
Tamil Sangam Salai Circle,

Commercial Tax Building,
Dr.Thangaraj Salai, K.K.Nagar,
Madurai – 625 020. ... Appellants/Respondents in W.A.(MD) Nos.129 and 130 of 2022

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of Commercial Taxes.
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Assistant Commissioner,
Srirangam Assessment Circle,
Commercial Tax Complex,
District Court Campus,
Cantonment,
Trichy – 628 008. ... Appellants/Respondents in W.A.(MD) Nos.170 of 2022

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of Commercial Taxes.
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Commercial Tax Officer,
Nanguneri Assessment Circle,
No.12, Main Bazaar, Nanguneri,
Thirunelveli District – 627 108. ... Appellants/Respondents in W.A.(MD) Nos.183 & 184 of 2022

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of Commercial Taxes.
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Assistant Commissioner,
Thirumangalam Assessment Circle,
15/91, Sonaiyar Street,

Jawahar Nagar,
Thirumangalam. ... Appellants/Respondents in W.A.(MD) Nos.201, 202, 206 and 207 of 2022

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of Commercial Taxes.
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Commercial Tax Officer,
III (ADDL) Commercial Taxes Buildings,
Madurai Road, Near VVV College,
Virudhunagar – 626 001. ... Appellants/Respondents in W.A.(MD) Nos.1147 to 1151 of 2022

Vs.

Tvl.Bharath Traders,
Represented by its Partner,
N.Venkatesh, aged about 34 years,
No.3, Sappani Koil Street,
South Veli Street,
Madurai – 625 001. ... Respondent/Writ Petitioner in W.A.(MD) Nos.1613 of 2021

Tvl.R.V.D.Tools House,
Represented by its Proprietor,
R.V.D.Ramaiah,
S/o.V.Duraisamy,
Nos.202 and 203, Thilagar Thidal,
Tamilsangam Road,
Madurai – 625 001. ... Respondent/Writ Petitioner in W.A.(MD) Nos.2213 of 2021

Tvl.Veyil Vantha Ambal & Co.,
Represented by its Proprietor,
V.P.M.Muthuvijayan,
S/o.M.Panjavarnam,
No.2/82, Thallakulam Road,
Paramakudi,
Ramanathapuram District – 623 707. ... Respondent/Writ Petitioner

in W.A.(MD) Nos.2218 to 2220 of 2021

Tvl.Veyil Vantha Ambal & Co.,
Represented by its Proprietor,
V.P.M.Muthuvijayan,
S/o.M.Panjavarnam,
No.3/456-B, Madurai Mandapam Road,
Paramakudi,
Ramanathapuram District – 623 707. ... Respondent/Writ Petitioner in W.A.(MD) No.2252 of 2021

Tvl.Techny Chemy,
Rep. by its Proprietrix,
Sasikala Ravi,
No.24 – Patel Street,
Ayyappa Nagar,
Trichy – 21. ... Respondent/Writ Petitioner in W.A.(MD) No.170 of 2022

Tvl.Olive Enterprises,
Represented by its Proprietrix,
A.Esther Rani,
No.38, Nadarkudiruppu,
Zion Hill, Kovankulam,
(Via) Parappadi,
Tirunelveli District – 627 151. ... Respondent/Writ Petitioner in W.A.(MD) Nos.183 and 184 of 2022

Tvl.Srinivasa Marine Chemicals,
Represented by its Proprietor,
S.Ayyanan, aged about 59 years,
No.239/2D, Vadakarai Village,
Malakottai, Thirumangalam,
Madurai District – 625 706. ... Respondent/Writ Petitioner in W.A.(MD) Nos.201 and 202 of 2022

Tvl.East Coast Seaweed Inc,
Represented by its Proprietrix,
A.Mahalakshmi, W/o. Ayyanan,
No.19/50, Veeran Street,
Thirumangalam,

Madurai District – 625 706. ... Respondent/Writ Petitioner in W.A.(MD) Nos.206 and 207 of 2022

A.M.N.Mariappan ... Respondent/Writ Petitioner in W.A.(MD) Nos.1147 to 1151 of 2022

Prayer: Writ Appeals filed under Clause 15 of Letters Patent, praying to set aside the common order dated 30.08.2019 made in W.P.(MD) Nos.15103 of 2015, 16518 of 2017, 12644 to 12646, 12643 of 2016, 18191, 21907, 21104, 21105 and 11425 to 11428 of 2016, 7821, 7819, 7823, 7822, 7820 of 2015 and to allow the appeals.

For Appellants all the Writ Appeals	: Mr.G.V.Vairam Santhosh Additional Government Pleader
For Respondent in W.A.(MD) Nos. 1613, 2218 to 2220 and 2252 of 2021, 129, 170, 183, 184, 201, 202, 206, 207 and 1147 to 1151 of 2022	: Mr.V.Rooban
For Respondent in W.A.(MD) No.2213 of 2021	: Mr.A.Chandrasekaran

* * *

COMMON JUDGMENT

(Judgment of the Court was delivered by **R.MAHADEVAN, J.**)

These writ appeals have been filed by the Revenue, assailing the common order dated 30.08.2019 passed by the learned Judge in W.P.(MD) Nos.15103 of 2015, 16518 of 2017, 12644 to 12646, 12643 of 2016, 18191, 21907, 21104, 21105 and 11425 to 11428 of 2016, 7821, 7819, 7823, 7822, 7820 of 2015, holding that the proviso to Section 19 (2) (v) of the Tamil Nadu Value Added Tax Act, 2006 (in short, "the TNVAT Act") inserted by section 2(1) of the Tamil Nadu Value Added Tax (Fifth Amendment) Act No.28 of 2013 with effect from 11.11.2013 is not applicable to the manufacturers and allowing the writ petitions.

2. Mr.G.V.Vairam Santhosh, learned Additional Government Pleader is appearing for the appellants in these Writ Appeals and Mr.Rooban, learned counsel in W.A.(MD) Nos.1613, 2218 to 2220 and 2252 of 2021, 129, 170, 183, 184, 201, 202, 206, 207 and 1147 to 1151 of 2022 and Mr.A.Chandrasekaran, learned counsel in W.A.(MD) No.2213 of 2021 appearing for the respondents.

3. Today, when the case was taken up for consideration, the learned Additional Government Pleader appearing for the appellants and the learned counsel for the respondents submitted that the issue involved herein has already been considered by ***judgment dated 31.03.2022 passed in W.A.No.1260 of 2017***

etc. batch (The State of Tamil Nadu, Rep. by its Secretary, Commercial Taxes Department v. M/s.Everest Industries Limited) and hence, this writ appeal may be disposed of in the same lines.

4. The conclusive portion of the judgment dated 31.03.2022 made in W.A.No.1260 of 2017 etc. batch, reads as follows:-

> "Conclusion:
>
> 147. Therefore, the position as regards section19(2)(ii) and the proviso inserted vide Act 28 of 2013 and its subsequent omission vide Amendment Act 5 of 2015 and the claim of refund, shall be examined in the light of the principles as set out above. To that extent, the appeals filed by the State are partly allowed.
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> 148. Insofar as W.A Nos.1446 and 1447/2021 are concerned, the same have been preferred against the orders of the learned Judge dismissing the writ petitions as barred by limitation, based on the decision of the Apex Court in Glaxo Smith Kline Consumer Health Care Pvt Ltd.
>
> 149. It is brought to the knowledge of this court, a subsequent judgment of a Co-ordinate Bench of this court in W.A No.493/2021, wherein after considering the observations of the Hon?ble Apex Court, it was held that "no bar has been imposed by the Apex Court in

entertaining a writ petition under Article 226 of the Constitution of India? and the same is quoted below for ready reference:

> ?5. In our respectful view, the decision of the Hon-ble Supreme Court in the said decision has not held that a writ petition under Article 226 of the Constitution of India is an absolute bar. We are of the said view after noting the observations/findings rendered by the Hon-ble Supreme Court in the following paragraphs :
>
> > ?11. In the backdrop of these facts, the central question is: whether the High Court ought to have entertained the writ petition filed by the respondent? As regards the power of the High Court to issue directions, orders or writs in exercise of its jurisdiction under Article 226 of the Constitution of India, the same is no more res integra. Even though the High Court can entertain a writ petition against any order or direction passed/action taken by the State under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law (see Baburam Prakash Chandra Maheshwari vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar

[AIR 1969 SC 556] and also Nivedita Sharma vs. Cellular Operators Association of India & Ors. [2011 (14) SCC 337]. In Thansingh Nathmal & Ors. vs. Superintendent of Taxes, Dhubri & Ors. [AIR 1964 SC 1419], the Constitution Bench of this Court made it amply clear that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self imposed restraint and not entertain the writ petition, if an alternative effective remedy is available to the aggrieved person.....

15. .... The High Court may accede to such a challenge and can also non suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three Judge Bench of this Court in Oil and Natural Gas

Corporation Limited (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose. ......

19........ Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or non compliance of statutory requirements in any manner. Be that as it may, since the statutory period specified for filing of appeal had expired long back in August, 2017 itself and the appeal came to be filed by the respondent only on 24.9.2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all.?

6. On a reading of the above extracted paragraphs, it is seen that the Hon-ble Supreme Court, after referring to the decision of the Constitution Bench in the case of Thansingh Nathmal, held that although the power of the High Court under Article 226 of the Constitution is very

wide, the Court must exercise self imposed restraint and not entertain the writ petition. Further, in paragraph 15, the Hon-ble Supreme Court observed that the High Court may accede to such a challenge and can also non suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. In addition, in paragraph 19, the Hon'ble Supreme Court took note of the fact that when the High Court refuses to exercise the jurisdiction under Article 226 of The Constitution of India, it would be necessary for the Court to record that there was no case of violation of the principles of natural justice or non-compliance of statutory requirements in any manner.

7. Therefore, there are certain broad parameters, within which, the Court has to exercise its jurisdiction under Article 226 of The Constitution of India, which read as hereunder :

(i) if there is unfairness in the action of the Statutory Authority;

(ii) if there is unreasonableness in the action of the Statutory Authority;

(iii) if perversity writs large in the action taken by the Authority;

(iv) if the Authority lacks jurisdiction to decide the issue and

(v) if there has been violation of the principles of natural justice, the Court will step in and exercise its jurisdiction under Article 226 of The Constitution of India.

8. Further, it would be highly beneficial to refer to the celebrated decision of the Constitution Bench of the Hon-ble Supreme Court in the case of Mafatlal Industries Ltd. Vs. Union of India [reported in 1997 (5) SCC 536] wherein it was held that the jurisdiction of the High Courts under Article 226 and that of the Hon'ble Supreme Court under Article 32 of The Constitution of India could not be circumscribed by the provisions of the Enactment (Central Excise Act) and they would certainly have due regard to the legislative intent evidenced by the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the Act. Further, the Court directed that the writ petition would be considered and disposed of in the light of and in accordance with the provisions of Section 11B of the Central Excise Tax Act and for such a reason, the power under Article 226 of The Constitution of India has to be exercised to effectuate rule of law and not for abrogating it.

9. In the light of the above, we have no hesitation to hold that the observation of the learned Single Judge to the effect that there is absolute bar for entertaining a writ petition does not reflect the correct legal position. Hence, we are inclined to interfere with the observation made in the impugned

order.?

150. With utmost respect, the Hon?ble Supreme Court has held that such writs should not be entertained as a matter of course, even though, the court has wide powers under Article 226 of the Constitution. The writ court ought to have seen that the High Court under Article 226 of Constitution is rather circumscribed by the theory of laches and not by limitation, because the Constitution is above a statute as held by the Apex Court in the Judgment in the matter of Samjuben Gordhanbhai Koli Vs State of Gujarat, reported in MANU/SC/0826/2010. The effect of ?laches? depends upon the facts of each case and is left to the discretion of the court to either reject or entertain a writ petition. In taxing matters, whenever a levy or demand is made without authority of law, the court would be within its power to set aside the same, because any illegality cannot be perpetuated on technicalities. Further, as per the provisions of the TNVAT Act, Section 84 empowers rectification of orders within five years from the date of any order passed by the assessing officer. It is settled law that the error contemplated therein is not just factual, but also legal error. When the power to the statutory authority is granted upto five years to modify the order, it cannot be said that the constitutional authorities would not have power to review the action. Therefore, concurring with the Division Bench, we do not concur with the decision of the Learned Judge to dismiss the

writ petitions on the technicality of limitation, that too, when the batch was pending. We set aside the said order of the learned Judge and dispose of the writ appeals in WA.Nos.1446 and 1447/2021 accordingly.

151. In view of the fact that the batch of cases has been partially decided in favour of the assessees and partially in favour of the revenue, the writ petitioners are disposed of, in terms of the ratio laid down by this court.

152. With respect to W.P No 24535 of 2018, the same is disposed of, granting liberty to the petitioner to file an appeal before the appellate authority within a period of 30 days from the date of receipt of a copy of this order as the only ground raised therein is that the challenge to the vires of the Act was pending before the Apex Court, which subsequently was held in favour of the Revenue.

153. In the upshot, the appeals filed by the Revenue and the appeals and writ petitions filed by the assessees are partially allowed. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed."

5. In view of the above, these writ appeals are

disposed of, in terms of the earlier judgment of this Court dated 31.03.2022 in W.A.No.1260 of 2017 etc. batch. No costs. Connected miscellaneous petitions are closed.

[R.M.D., J.] [J.S.N.P., J.]
01.12.2022

Internet : Yes / No
Index : Yes / No
sj

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and

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