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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.(MD).Nos.17767, 17768 and 17769 of 2022
and
W.M.P.(MD).Nos.12960, 12963 and 12965 of 2022

W.P.(MD).No.17767 of 2022

Tvl.SMS Limited,
Represented by its Authorised Signatory,
Mr.C.Gnanamurugan ... Petitioner

Vs.

1.The Appellate Deputy Commissioner (ST),
Tirunelveli Division,
Palayamkottai.

2.The Assistant Commissioner (ST) (FAC),
Palayamkottai. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to the impugned proceedings passed by the second respondent in TIN: 33635564441/ 2008-09, dated 15.02.2021 to quash the same as the same is illegal, arbitrary and without jurisdiction as the same is barred by

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limitation as per the provisions of the Tamil Nadu Value Added Tax Act, 2006 and also in view of the judicial decision rendered by this Court in the batch case of Tvl. Thalayan Motors and two others Vs. State Tax Officer, Ramanathapuram in W.P.(MD).Nos.8050, 8052 and 8055 of 2021 dated 14.07.2022.

W.P.(MD).No.17768 of 2022

Tvl.SMS Limited,
Represented by its Authorised Signatory,
Mr.C.Gnanamurugan ... Petitioner

Vs.

1.The Appellate Deputy Commissioner (ST),
Tirunelveli Division,
Palayamkottai.

2.The Assistant Commissioner (ST) (FAC),
Palayamkottai. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to the impugned proceedings passed by the second respondent in TIN: 33635564441/ 2013-14, dated 24.02.2021 and to quash the same, since the same has been passed pursuant to the order dated 24.02.2021 passed by the second respondent for the assessment year 2009-2010 without obliging the order passed by the first respondent in VAT A.P.No.166/2018, dated 28.05.2019.

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W.P.(MD).No.17769 of 2022

Tvl.SMS Limited,
Represented by its Authorised Signatory,
Mr.C.Gnanamurugan ... Petitioner

Vs.

1.The Appellate Deputy Commissioner (ST),
Tirunelveli Division,
Palayamkottai.

2.The Assistant Commissioner (ST) (FAC),
Palayamkottai. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to the impugned proceedings passed by the second respondent in TIN: 33635564441/ 2009-10, dated 24.02.2021 and to quash the same since the same has been passed by without obliging the order passed by the first respondent in VAT A.P.No. 166/2018, dated 28.05.2019.

(In all Writ Petitions)

For Petitioner : Mr.A.Satheesh Murugan

For Respondents : Mr.P.Subbaraj,
Special Government Pleader.

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COMMON ORDER

The Contention of the petitioner in W.P.(MD).No.17767 of 2022 is that the petitioner is being civil work contract registered with the second respondent in Tin No.33635564441, have been regularly filed income tax returns. He has claimed Input Tax Credit on the purchase effected from registered dealer within the State of Tamil Nadu and paid the Output Tax due to the Department after adjusting the available Input Tax Credit under Section 3(3) of Tamil Nadu Value Added Tax Act and Tax Deducted at Source (TDS). During the assessment year 2008-2009 (TNVAT), the second respondent had originally passed the deemed assessment order by accepting returns on 05.08.2011. Subsequently, the second respondent revised his order on 01.09.2014 against which the petitioner filed an appeal before the first respondent. The matter was remanded vide order dated 17.06.2015. Pursuant to the same, the second respondent passed the order dated 20.03.2017 by showing excess payment of Rs.13,62,161/- refundable to the petitioner. Again the same was revised by the second respondent vide order dated 30.07.2018 against which the petitioner filed an appeal before the Appellate Deputy Commissioner (ST) in Vat.A.P.No.165 of 2018 which was partly modified, partly remanded and partly dismissed vide order dated 28.05.2019.

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Pursuant to the remanded portion, the second respondent passed an order dated 21.06.2019 showing excess of Rs.98,69,279/- and to that effect Refund Order in Form-P as required was also issued by the second respondent. This being so, the second respondent changed her opinion, passed the impugned order dated 15.02.2021 by refixing the excess amount at Rs.7,94,817/- against the excess amount of Rs.98,69,279/- shown in her own order dated 21.06.2019.

2. The Contention of the petitioner in W.P.(MD).No. 17768 of 2022 is that during the assessment year 2008-2009 (TNVAT), the second respondent had passed the deemed assessment order by accepting returns on 31.10.2014. Thereafter, the second respondent revised his order vide order dated 03.08.2018 against which the petitioner preferred an appeal in VAT.A.P.No. 163 of 2018 which was partly enhanced, partly remanded and partly allowed vide order dated 30.05.2019. Thereafter, the second respondent passed an order dated 21.06.2019. On mere change of opinion, the second respondent passed the impugned order dated 24.02.2021, for the assessment year 2013-2014, a demand for Rs.5,96,999/- which was adjusted with the orders passed by the assessment for the year 2008-2009. The act of the second respondent is contrary to the first respondent order dated 28.05.2019 passed

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in A.P.No.166 of 2018.

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3. The contention of the petitioner in W.P.(MD).No.17769 of 2022 is that the second respondent had originally passed the deemed assessment order by accepting returns on 03.09.2011. Subsequently, the second respondent revised his order vide order dated 01.09.2014 against which the petitioner filed an appeal before the first respondent and the same was remanded vide order dated 17.06.2015. Pursuant to the same, the second respondent passed the order dated 20.03.2017 showing excess payment of Rs.8,93,527/- refundable to the petitioner. The same was once again revised by the second respondent vide order dated 31.07.2018 against which an appeal was filed before the Appellate Deputy Commissioner in VAT.A.P. No.166 of 2018 and the same was partly modified, partly remanded and partly dismissed vide order dated 28.05.2019. The second respondent passed the order dated 21.06.2019 showing excess of Rs.1,18,51,927/- out of which a sum of Rs.62,06,839/- is adjusted towards the balance for the assessment year 2013-2014 and shown excess of Rs.56,45,088/- in the assessment year 2009-2010. To that effect, the Refund Order in Form-P as required was also issued by the second respondent. This being so, the second respondent on change of opinion passed the impugned order dated 24.02.2021 by refixing

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the excess amount at Rs.57,78,440/- against the excess amount of Rs.1,18,51,927/- and thereby passed an order in A.P.No.165 of 2018 for the assessment year 2008-2009 and common order in A.P.No.166 of 2018 for the assessment year 2009-2010 and 2013-2014 which are under challenge. Primarily on the ground that mere change of opinion cannot be a reason for reworking the tax liability or benefits. Further, no reason has been given for what reason the I.T.C has been rejected. Earlier, the refund was ordered by the appellate authority which has been now turned around without following the principles of natural justice. Further considering that all the assessment have been completed six years prior, now the same cannot be reopened or re-agitated. On this ground, these writ petitions have been filed.

4. Mr.P.Subbaraj, learned Special Government Pleader, appearing for the respondents not disputed the return, date of order and not disputed the date of return, deemed assessment, thereafter reopening the remand and order of refund passed. Thereafter, an appeal on reassessment, it was found that the error apparent has been found on the basis of records and thereafter the appropriate credit had been considered and wherever there have been excess credit without proper consideration of records, the same has been revised. The order in challenge is a reasoned one, further the order has been passed

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1 ½ years i.e., 15.02.2021 and 24.02.2021. In the impugned order, the appeal provision and the authority has been clearly mentioned, wherein, it is stated that within a period of 30 days, the appeal have to be filed before the first respondent. Now after the expiry of the period of limitation without any reason these Writ Petitions have been filed which have to be dismissed. If at all, the petitioner have got any grievances, to file the appeal before the first respondent, give reason for delay and first respondent has got power to consider the same if proper reasons are assigned.

5. I have considered the matter in the light of the submissions made by learned counsel for both the parties and perused the records.

6. It is seen that admittedly there have been deemed assessment thereafter the assessment have been reopened, considered and I.T.C credits have been verified refund order, thereafter, again it was revisited and the refund had been considerably reduced and orders have been passed in appeal. This case, though the assessment is pending from the year 2008-2009, 2009-2010 and 2013-2014, all have been considered simultaneously and the issues are common. The period of limitation contended by the petitioner may not arise in this case. In view of the pendency of the assessment, the

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authorities ought to have given adequate opportunities to the petitioner in this case which is not so. Further, the appeal is a statutory appeal and no person can be denied of statutory appeal. Further, there is a provision for condonation of delay. In view of the same, this Court directs the first respondent to consider the petitioner's appeal on merits. The delay alone is condoned. The petitioner is directed to file his appeal within a period of three (3) weeks from the date of receipt of a copy of this order on the terms and conditions as per the appellate authority. The appeal if filed, to be considered and disclosed within a period of two (2) months from the date of submission of delay.

7. With the above direction, the Writ Petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Internet : Yes/ No
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M.NIRMAL KUMAR, J.

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To
1.The Appellate Deputy Commissioner (ST),
Tirunelveli Division,
Palayamkottai.

2.The Assistant Commissioner (ST) (FAC),
Palayamkottai.

W.P.(MD).Nos.17767, 17768 and 17769 of 2022

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