IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2023

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

W.P.Nos.3873, 3879 & 7920 of 2023
and
W.M.P.Nos.3945, 3951, 8176 & 8177 of 2023

DDA Tyres and Services,
Represented by its Sole Proprietor,
Mr.Ashokan Harishkumar. ... Petitioner
(in all W.Ps.)

Vs

1. Deputy Commissioner of GST,
   Commercial Taxes Building,
   Pitchards Road,
   Salem – 7.

2. Deputy State Tax Officer,
   Office of the Deputy State Tax Office,
   Dharmapuri. ... Respondents
   (in all W.Ps.)

3. Assistant Commissioner (MaVa),
   Office of Assistant Commissioner (mava),
   Dharmapuri Regiion,
   Dharmapuri. ... Third Respondent
   (in W.P.No.7920 of 2023)

Prayer in W.P.No.3873 of 2023: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus for condoning the delay of 132 days and calling for the records connected with the impugned order passed by the first respondent in Appeal No.366 of 2022 dated 28.11.2022 and quash the same.

Prayer in W.P.No.3879 of 2023: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus for condoning the delay of 132 days and calling for the records connected with the impugned order passed by the first respondent in Appeal No.365 of 2022 dated 28.11.2022 and quash the same.

Prayer in W.P.No.7920 of 2023: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records connected with the impugned order of recovery passed by the third respondent in Na.Ka.No.207/2020/A3 dated 05.01.2023 and quash the same.

For Petitioner : Mr.P.Vasudevan
(in both W.Ps.)

For Respondents : Mr.V.Prasanth Kiran
Government Advocate
(in both W.Ps.)

COMMON ORDER

By this common order all the writ petitions are being disposed of.

2. In W.P.Nos.3873 & 3879 of 2023, the petitioner has challenged the Impugned Order passed by the Appellate Deputy Commissioner (ST) (GST) dated 28.11.2022 declining to condone the delay of 132 days in filing the appeal against the Assessment Order dated 08.12.2021 for the respective assessment years.

3. These Assessment Orders were passed by the second respondent at the time when the country was in partial lock down on account of second wave of Covid-19 pandemic. Taking note of the situation prevailing, the Hon'ble Supreme Court by its order dated 21.03.2021 had earlier extended the period of limitation for filing the appeal. A further extension was thereafter given by the Hon'ble Supreme Court in its order dated 10.01.2022 in **Cognizance for extension of limitation IN RE**, 2022 3 (SCC) 317.

4. In paragraph 5 of the said decision, the Hon'ble Supreme Court gave the following directions:-

> ***"5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and advertises faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA.No.21 of 2022 with the following directions:-***
>
> > ***5.1 The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.***
> >
> > ***5.2 Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.***
> >
> > ***5.3 In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.***

5.4 It is further clarified that the period between 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

5. In these cases, the limitation for filing appeal expired on 07.03.2021. A further period of thirty (30) days with a condone delay application also would have expired on 07.05.2021.

6. As per paragraph 5.3 of the said decision in case where limitation would have expired during the period between 15.03.2020 till 28.02.2022, all persons were given further time of ninety (90) days from 01.03.2022 to file an appeal. Thus, the petitioner was required ought to have filed an appeal latest by 31.05.2022 as per the decision of the Hon'ble Supreme Court referred to supra.

7. The only reason given by the petitioner for condoning the delay in paragraph 11 of the affidavit filed in support of these two writ petitions are as under:-

> ***“11. Further I was affected by COVID 19 on 11.05.2021 and my wife was admitted for pregnancy on 07.05.2021 and it is pertinent to note that most of my family members were affected by COVID-19 at that time and further, my paternal aunty died on 18.05.2021. After that, all my family members were admitted at Hospital for COVID-19. Further, my son was admitted at KV Hospital Dharmapuri in July month.”***

8. A reading of the above paragraph indicates that this was long before the period that was extended by the Hon'ble Supreme Court by its order dated 10.01.2022 and before the time prescribed by the Hon'ble Supreme Court.

9. Although all over the world there were difficulties due to outbreak of Covid-19 pandemic, the fact remains that the petitioner has not filed appeal in time despite the time being granted by the Hon'ble Supreme Court.

10. This Court has also dismissed the writ petition under similar circumstances in the case of **Hemasri Enterprises** vs. **The Appellate Authority/The Deputy Commissioner (ST) (FAC)** in W.P.No.32877 of 2022 vide order dated 07.12.2022.

11. A similar view has taken by the Hon'ble Division Bench of Chhattisgarh High Court in **Nandan Steels and Power Limited, Through its Director Manish Kumar Agrawal** vs. **State of Chhattisgarh**, 2022 SCC OnLine Chh 1428.

12. Considering the fact that the order that was impugned before the Appellate Commissioner of the second respondent is also a detailed order, this Court is unable to come to rescue the petitioner as the limitation has expired not only under the Act but also in terms of the extended period given by the Hon'ble Supreme Court by its order dated 10.01.2022 in **Cognizance for extension of limitation IN RE**, 2022 3 (SCC) 317.

13. Therefore, W.P.Nos.3879 and 3873 of 2023 are liable to be dismissed. Impugned Order in W.P.No.7920 is only a consequential recovery notice dated 05.01.2023. In view of the dismissal of these two writ petitions, W.P.No.7920 of 2022 is also liable to be dismissed and is accordingly dismissed. In the result all the three writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

23.08.2023
(2/2)

Neutral Citation: Yes/No
Index : Yes/No
Speaking/Non-Speaking Order
rgm

To

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C.SARAVANAN, J.

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