IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. No.1690 of 2022

A.Sakthivel ...Appellant

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Commercial Taxes Department,
Fort. St.George, Chennai-600 009.

2.The Deputy Commissioner/ Appellate Authority,
Commercial Taxes, Salem.

3.The State Tax Officer,
Harur Circle, Harur,
Dharmapuri District. ...Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 01.03.2022 in W.P.No.4206 of 2022 on the file of this Court and allow the writ appeal.

For Appellant : Mr.J.Bharathi Raja

For Respondents : Mr.M.Venkateswaran
Special Government Pleader

JUDGMENT

(Judgment of the Court was made by MOHAMMED SHAFFIQ, J.)

The writ appeal has been filed challenging the order of the learned Single Judge in W.P.No.4206 of 2022 dated 01.03.2022.

Brief facts:

2. The appellant is a dealer registered under the erstwhile Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "TNVAT Act"). During the Assessment Year 2013-14, the appellant had executed Works Contracts for Tamil Nadu Slum Clearance Board, Salem Division.

3. It is submitted that, though under TNVAT Act, every dealer is required to submit monthly returns, the appellant had failed to submit the returns. According to the appellant, he had entrusted the task of filing the returns with a Tax Practitioner, who had failed to submit the same, pursuant to which, the 3rd Respondent issued a notice dated 09.11.2017 calling upon the appellant to furnish details of the work undertaken by him, followed by another notice dated 11.01.2018. On enquiry, the appellant was informed by the Tax Practitioner that he had inadvertently not submitted the returns, therefore, the appellant requested the Tax

Practitioner to handle the assessment proceedings. Despite the above instructions, the appellant was not duly represented in the assessment proceedings, resultantly, the exparte order of assessment dated 24.09.2018 came to be passed under Section 22(4) of the TNVAT Act, resulting in a tax liability of Rs.3,09,465/- and penalty of Rs.4,64,197/-, totalling a sum of Rs.7,73,662/-.

4. It is further submitted by the appellant that by the time he got to know about the fact that the impugned order of assessment had been made, the appeal was barred by limitation. Immediately, he had filed a rectification petition on 15.12.2021, but the same had been rejected vide order 20.12.2021 on the ground that it was filed belatedly.

5. Subsequently, the appellant had filed the writ petition in W.P.No.4206 of 2022 challenging the order of the assessment and the learned Single Judge had dismissed the same on the ground that the writ petition has been filed after three years from the date of order of assessment and thus, refused to entertain the writ petition. Aggrieved by the above order of learned Single Judge, the appellant had preferred the present writ appeal.

6. On 21.07.2022, when the writ appeal was taken up for consideration, this court has directed the appellant to remit a sum of Rs.1,50,000/- within a period of two weeks, which has been duly complied with by the appellant.

7. Challenging the order of the learned Single Judge, the learned counsel for the appellant contended that the impugned order of assessment suffers from error apparent on the face of record and without jurisdiction inasmuch as the contractee viz., Tamil Nadu Slum Clearance Board, Salem Division had deducted tax at source and once taxes have been paid, levy of tax in the hands of the appellant in respect of the very same transaction is impermissible. Secondly, it is contended that the impugned order of assessment has been made under Section 22 (4) of the TNVAT Act, however, the penalty was imposed invoking Section 27(3) of the TNVAT Act, which is impermissible inasmuch penalty under Section 27 (3) of the TNVAT Act would get attracted only in respect of an assessment made under Section 27 (1) (a) of the TNVAT Act and therefore, the impugned order falls foul of Article 265 of the Constitution of India, as per which, no tax shall be levied or collected except by authority of law. It is also submitted that the appellant had engaged a tax

practitioner, who had failed to submit the returns on time and represent the appellant in assessment proceedings, despite the fact that the appellant duly authorized the tax practitioner to file the appeal.

8. However, the learned counsel for the appellant submitted that it would suffice, if the appellant is directed to deposit the balance dues within a time frame to be stipulated by this court and on such remittance, the appellant authority may be directed to take the appeal on file and dispose of the same, on merits, to which the learned counsel for the respondent did not have any serious objection.

9. In view of the above submission of the learned counsel on either side, the appellant is directed to deposit the remaining sum after adjusting the taxes deducted at source by the contractee, if supported by prescribed form, within a period of six weeks from the date of receipt of a copy of this order and on such payment, the appellate authority shall take the appeal, if any, on record without raising any issue relating to limitation aspect and dispose of the same on merits and in accordance with law after affording due opportunity of hearing to the appellant. It is open to the appellant to raise all questions/grounds that are available, to them before

the appellate authority. In the event of failure on the part of the appellant in complying with the aforesaid direction, the order now passed shall stand vacated automatically without further reference to this court.

10. Accordingly, the order of the learned Single Judge is modified and the writ appeal stands disposed of. No costs. However, it is made clear that this order is made on the basis of the peculiar facts of this case and on the basis of consent by both parties, and hence, it shall not be treated as precedent.

[R.M.D., J.] [M.S.Q., J.]
05.04.2023

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation : Yes/ No
mka/ shk

To
1.The Secretary,
Commercial Taxes Department,
Fort. St.George, Chennai-600 009.

2.The State Tax Officer,
Harur Circle, Harur,
Dharmapuri District.

3.The Deputy Commissioner/ Appellate Authority,
Commercial Taxes, Salem.

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

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