IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.7854, 7855, 7856 & 7857 of 2004
and
W.P.M.P.Nos.9314, 9315, 9316 & 9317 of 2004

Tvl.Chiranjilal Rajkumar ... Petitioner in all W.Ps.

vs.

1.The Commercial Tax Officer,
Shevapet North Assessment Circle,
Salem.

2.The Deputy Commissioner (CT),
Commercial Taxes Building,
Salem Division, Salem. ... Respondents in all W.Ps.

Prayer in W.P.No.7854 of 2004: Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in TNGST/669123/93-94 dated 13th November 2003 and the connected proceedings of the 2nd respondent in Ref.No.925/2004/A-7, dated 21.01.2004 and quash the same as being invalid, illegal against the statutory provisions of law and unjustified on facts of law and directed the first respondent to pass on merits on the petition dated 27.10.2003 after grant of opportunity.

Prayer in W.P.No.7855 of 2004: Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in TNGST/669123/95-96 dated 13th November 2003 and the connected proceedings of the 2nd respondent in Ref.No.927/2004/A-7, dated 21.01.2004 and quash the same as being invalid, illegal against the statutory provisions of law and unjustified on facts of law and directed the first respondent to pass on merits on the petition dated 27.10.2003 after grant of opportunity.

Prayer in W.P.No.7856 of 2004: Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in TNGST/669123/96-97 dated 13th November 2003 and the connected proceedings of the 2nd respondent in Ref.No.928/2004/A-7, dated 21.01.2004 and quash the same as being invalid, illegal against the statutory provisions of law and unjustified on facts of law and directed the first respondent to pass on merits on the petition dated 27.10.2003 after grant of opportunity.

Prayer in W.P.No.7857 of 2004: Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in TNGST/669123/94-95 dated 13th November 2003 and the connected proceedings of the 2nd respondent in Ref.No.926/2004/A-7, dated

21.01.2004 and quash the same as being invalid, illegal against the statutory provisions of law and unjustified on facts of law and directed the first respondent to pass on merits on the petition dated 27.10.2003 after grant of opportunity.

For Petitioner (in all W.Ps)	: Mr.R.Ganesh Kumar
For Respondents (in all W.Ps)	: Mrs.E.Ranganayaki Special Government Pleader

COMMON ORDER

Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

2. The dispute pertains to the Assessment years 1993-1994 to 1996-1997 under the provisions of the Tamil nadu General Sales Tax, 1959. The petitioner appears to have failed to file regular returns and therefore orders came to be passed under Section 12(2) of the said Act, for all these Assessment years on 31.12.1998. It appears that the petitioner had attempted to redress the grievance by approaching the Appellate Authority and thereafter the Appellate Tribunal. The Counter filed by the respondents also confirms the same.

3. It further appears that the cases were remitted back for the Assessment years 1994-1995 to 1996-1997. After the aforesaid years, orders were passed on 21.06.2001. For these Assessment years, the petitioner had filed an application under Section 14 of the TNGST Act, 1959 for a fresh Assessment.

4. By the impugned order, the respondents have rejected the application stating question of entertaining such application cannot be countenanced.

5. The learned Special Government Pleader for the respondents on the other hand would submit that there is no scope for entertaining these writ petitions, as the petitioner has failed to file an such application within the time stipulated in Section 14(1) of the TNGST Act, 1959. It is submitted that the impugned order is well reasoned and therefore does not warrant any interference in the hands of this Court. Hence, she prays for dismissal of these writ petitions.

6. The facts on record indicates that all these Assessment years, the petitioner has partly paid an amount of Rs.13,00,000/- between 11.12.1999 amd 31.03.2023 as detailed below:

Sl.No	***Date***	***Amount***
1	11121999	Rs. 3,00,000/-
2	17/12/1999	Rs. 2,00,000/-
3	28/12/1999	Rs. 3,00,000/-
4	18/01/2000	Rs. 2,00,000/-
5	31/03/2023	Rs. 3,00,000/-
	Total	Rs.13,00,000/-

7. The issue as to whether the limitation in initiating *quasi judicial* proceedings can be enlarged by applying Section 14 of the Limitation Act was considered by the Hon'ble Supreme Court in the case of ***Pasupati Overseas Pvt Ltd*** Vs. ***Collector of Customs, Madras*** 1996 (83) E.L.T 249 (S.C). The Court held as under:

> "Having heard the counsel for both the parties, we are of the opinion that this was a case where the delay in filing the appeal could have been condoned by resort to the principle underlying Section 14. The order of the Collector (Appeals) was rendered on October 20, 1989. Instead of filing the appeal to the Tribunal, the appellant filed a writ petition in the High Court on November 17, 1989. On April 11, 1990 an *interim* order was made by the High Court directing refund of the amount claimed by the appellant on condition of his furnishing a bank guarantee in the said sum.

Accordingly, it is stated by the learned counsel for the appellant, that bank guarantee was furnished and the amount withdrawn by the appellant. Ultimately, the writ petition was disposed of on January 17, 1994 by the High Court of Madras under a consent order. The writ petition was dismissed on the ground of availability of the alternative remedy of appeal. Thereafter, the appeal was presented before the Tribunal on April 20, 1994**. It is true that the delay of about three months after January 17, 1994 till the filing of the appeal has not been satisfactorily explained but having regard to the facts and circumstances of the case, we are of the opinion that the appeal could have been admitted by the Tribunal more particularly when the Tribunal possesses the power to condone the delay in filing the appeal. Accordingly, we allow the appeal and direct the Tribunal to entertain the said appeal (without dismissing it on the ground of limitation) and dispose it of in accordance with law.**

2. No costs.

3. The learned counsel for the appellant states that the bank guarantee furnished by them is still kept alive and valid and that it will be kept alive and valid till the disposal of the appeal by the Tribunal. *His statement is recorded*. The bank guarantee shall be kept alive, pending the appeal before the Tribunal and shall be subject to the orders that may be passed by the Tribunal in that behalf."

8. This Court in its order dated 22.06.1991 in the case of ***State of Tamil Nadu*** Vs. ***Saganla*** reported in 1993 Sales Tax Cases has also condoned the delay of seven years and 158 days in filing the review application.

9. As per Section 14 of the TNGST Act, 1959 an application has to be filed within 30 days from the date of service of the Assessment year of a re-assessment along with the correct and complete returns as was contemplated under the provisions of the TNVAT Act, 2006. There is no further restrictions in the said provisions which restrains the Authority from entertaining the application beyond the aforesaid period of 30 days. Under the provisions of the Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994 etc, there are similar restrictions.

10. As per these provisions, such application/appeal has to be filed within the statutory period prescribed therein or within such condonable period as has been provided under the statute.

11. In this context, the Hon'ble Supreme Court has taken a view with an application or an appeal filed beyond the condonable period prescribed under the provisions for these enactments cannot be entertained. At the same time, the Court has held that, if an assessee has bonafide pursued a remedy before a wrong forum, such an

application or an appeal can be entertained by applying the principle of Section 14 of the Limitation Act, 1963.

12. Section 14 of the TNGST Act, 1959 does not contemplate any restrictions which would be bar an quasi judicial authority to exclude the time while in computing the limitation where an assessee bonafide pursued a wrong remedy. Therefore, Section 14 of the Limitation Act can be applied. However, the petitioner has to establish the applications were filed beyond the statutory period prescribed under Section 14 and that the petitioner was bonafide prosecuting the application in the case of ***Pasupati Overseas Pvt Ltd*** Vs. ***Collector of Customs, Madras*** reported in (2001) 10 SCC 181.

13. In view of the above, these writ petitions stand allowed. The impugned orders are set aside and the cases are remitted back to the respondents to pass a fresh order within a period of three months from the date of receipt of a copy of this order, after deciding whether the petitioner had made out a sufficient case for excluding the time beyond the period of 30 days in terms of Section 14 of the Limitation Act, 1963

and therefore on merits and in accordance with law.

14. These writ petitions are allowed. No costs. Consequently, connected writ miscellaneous petitions are closed.

23.08.2023

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking Order
Neutral Citation : Yes/No
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To

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Salem.

2.The Deputy Commissioner (CT),
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C.SARAVANAN, J.

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