IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

AND

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. Nos.2637, 2645, 2647, 2657 and 2660 of 2023
and
C.M.P. Nos.22258, 22255, 22315, 22194, 22314, 22337, 22339,22244 and 22245 of 2023

R.Prabhu ...Appellant in all Writ Appeals

vs.

The Assistant Commissioner (ST),
Royapuram Assessment Circle,
Kummalammankoil Street,
Chennai-600 081. ...Respondent in all Writ Appeals

PRAYER in W.A.No.2637 of 2023: Writ Appeal is filed under Clause 15 of the Letter Patent praying to set aside the order of this Court in W.P.No.13404 of 2019 dated 14.06.2022.

PRAYER in W.A.No.2645 of 2023: Writ Appeal is filed under Clause 15 of the Letter Patent praying to set aside the order of this Court in W.P.No.13421 of 2019 dated 14.06.2022.

PRAYER in W.A.No.2647 of 2023: Writ Appeal is filed under Clause 15 of the Letter Patent praying to set aside the order of this Court in W.P.No.13413 of 2019 dated 14.06.2022.

PRAYER in W.A.No.2657 of 2023: Writ Appeal is filed under Clause 15 of the Letter Patent praying to set aside the order of this Court in W.P.No.13409 of 2019 dated 14.06.2022.

PRAYER in W.A.No.2660 of 2023: Writ Appeal is filed under Clause 15 of the Letter Patent praying to set aside the order of this Court in W.P.No.13417 of 2019 dated 14.06.2022.

For Appellant in all W.As.	:	Mr.C.Baktha Siromoni
For Respondent in all W.As.	:	Mr.M.Venkateswaran Special Govt. Pleader

<u>COMMON JUDGMENT</u>

All the five writ appeals are filed by the appellant / writ petitioner / assessee challenging the order of the learned Judge rejecting his challenge to the orders of assessment in relation to the assessment years 2011-12 to 2015-16 on the premise that the writ petitions are not maintainable for the reason that they have been filed after more than a year from the passing of the impugned orders of assessment which are well beyond the statutory period stipulated for filing appeal. The learned Judge has relied upon the judgment of the Hon'ble Supreme Court in the case of *M/s.Glaxo Smith Kline Consumer HealthCare Limited* reported in *(2020) 36 GSTR 305* which has also been followed in number of other cases in support thereof.

2. The appellant is engaged in the business of manufacture and selling of scented chewing tobacco. He is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the "TNVAT Act"). The appellant's place of business was inspected by the officials of the Enforcement Wing on 05.01.2017. During the course of inspection, a number of defects was noticed *inter alia* including:

a. Wrong availment of ITC

b. Non-payment of VAT used

c. Sale of assets

d.Denial of input tax credit wrongly availed on the basis of cross-verification of Annexure-I and II of other dealers.

3. The appellant in response to the notice, had requested 30 days time for the payment of the amount demanded, which is evident to the fact that the dealer had no explanation/ objection to offer against the proposal and thus, proceeded to confirm the same, by passing assessment orders. Aggrieved, the appellant preferred writ petition, which was dismissed by the learned Judge by the order impugned herein. Therefore, this writ appeal came to be filed by the appellant / writ petitioner.

4. It is submitted by the learned counsel for the appellant that the orders of assessment have been passed by merely stating that since the appellant had agreed

to pay the VAT dues, they have no objections. It is submitted by the learned counsel for the appellant that the order is made on a gross misconception inasmuch as payment of the taxes would have no bearing on the availability of explanation/ objection against the proposal nor can it be understood as indicative of absence of any objections to the proposal. The above misconception has resulted in the appellant being denied an opportunity to putforth his case thereby rendering the entire orders of assessment bad for violation of the principles of natural justice. It is further submitted that the issue involves denial of input tax credit with the returns of the other end dealers. The above controversy has engaged the attention of this Court in several matters, which led this Court to suggest the revenue to devise a mechanism to resolve the same. Pursuant to the said direction of this Court, a mechanism was devised in terms of Circular No.5 of 2021 dated 24.02.2021. This Court has thereafter consistently held that the cases of denial of input tax credit would have to be re-done in terms of said Circular No.5 of 2021, which is binding on the revenue and thus, the learned judge erred in rejecting the writ petition.

5. While we agree that the writ petition under Article 226 of the Constitution of India should be filed at the earliest on receipt of copy of the order, by which the assessee is aggrieved and the period prescribed for preferring an

appeal can be taken as a rough measure of the timelines within which an aggrieved party must approach the High Court seeking redressal of its grievance under Artcile 226 of the Constitution of India. One cannot be unmindful of the fact that there is no period of limitation strictly speaking for approaching the High Court. It is not open to prescribe period of limitation for exercise of the discretionary remedy under Article 226 of the Constitution of India, to do so would be imposing fetters on the plenary power conferred on the superior Courts for the issuance of writ. Instead, the Courts while exercising power under Article 226 of Constitution of India would enquire as to whether the aggrieved party is guilty of laches or undue delay. The importance of not being trammelled by prescribing a rule of limitation would be evident if one bears in mind that writ jurisdiction under Article 226 of the Constitution of India is a part of the basic structure of the Constitution.

6. Article 226 of the Constitution of India is an equitable jurisdiction and taking into account the above circumstances, we are of the view that the appellant may be extended the liberty to file an appeal within a period of 4 weeks from the date of receipt of a copy of this order subject to fulfilling the statutory conditions including pre-deposit. If such appeal is filed within the period stipulated above, the same shall be entertained without reference to limitation.

7. The learned counsel for the Respondent has no serious objection to the above direction.

8. In view of the same, the writ appeals are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]
03.10.2023

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

To:

The Assistant Commissioner (ST),
Royapuram Assessment Circle,
Kummalammankoil Street,
Chennai-600 081.

R.MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

mka

W.A.Nos.2637 and etc., batch

03.10.2023