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W.P.Nos.379, 380 & 382 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2023

CORAM

THE HON'BLE Mr.JUSTICE **M.SUNDAR**

W.P.Nos.379, 380 & 382 of 2023

M/s.YJ Cashew Industries,
Represented by its Proprietor
M.Rajeswari,
695, South Sathipattu,
Panruti Taluk,
Cuddalore District-607 106.

... Petitioner in all WPs.

-Vs.-

1. The Appellate Deputy Commissioner of Commercial Tax,
O/o.The Appellate Deputy Commissioner of Commercial Tax,
Manjakuppam,
Cuddalore – 607 001.
2. The Commercial Tax Officer,
O/o.The Commercial Tax Office,
Panruti (Rural), Panruti,
Cuddalore District.

... Respondents in all WPs

Prayer in WP.379/2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus by calling for the entire records pursuant to notice in Na.Ka.A1/1143/2022 dated 26.09.2022 and quash the same and consequently directing the 1st respondent to adjudicate the appeal dated 06.09.2022 filed by the Petitioner and to pass such further or other order/orders that this Hon'ble Court may deem fit and proper in



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the circumstances of the case.

Prayer in WP.380/2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus by calling for the entire records pursuant to notice in Na.Ka.A1/1141/2022 dated 26.09.2022 and quash the same and consequently directing the 1st respondent to adjudicate the appeal dated 06.09.2022 filed by the Petitioner and to pass such further or other order/orders that this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in WP.382/2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus by calling for the entire records pursuant to notice in Na.Ka.A1/1142/2022 dated 26.09.2022 and quash the same and consequently directing the 1st respondent to adjudicate the appeal dated 06.09.2022 filed by the Petitioner and to pass such further or other order/orders that this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.B.Thirunavukkarasu
in all WPs.

For Respondents : Ms.Amirta Dinakaran
in all WPs. Government Advocate (Taxes)

COMMON ORDER

This common order will now dispose of captioned three writ petitions.

2. Another writ petitioner [Mohan Kumar, Proprietor of Mohan



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Industries] represented by same counsel had come to this Writ Court earlier qua same facts and circumstances by way of six writ petitions being WP.Nos.33446, 33447, 33448, 33450, 33452 and 33453 of 2022 and all six writ petitions came to be dismissed by a common order of this Court dated 14.12.2022, a scanned reproduction of which is as follows:



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W.P.Nos.33446, 33447, 33448, 33450, 33452 and 33453 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.33446, 33447, 33448, 33450, 33452 and 33453 of 2022

W.P.Nos.33446 of 2022

M/s Mohan Industries
Represented by its Proprietor
Mohan Kumar
63, South Sathipattu
Panruti Taluk
Cuddalore District – 607 106

... Petitioner

Vs.

1. The Appellate Deputy Commissioner of Commercial Tax
O/o The Appellate Deputy Commissioner of Commercial Tax
Manjakkuppam
Cuddalore – 607 001

2. The Commercial Tax Officer
O/o The Commercial Tax Officer
Panruti (Rural), Panruti
Cuddalore District

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus by calling for the entire records pertaining to impugned notice in Na.Ka.A1/1139/2022 dt.26.09.2022 and quash the same and consequently direct the 1st



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respondent to adjudicate the appeal dated 06.09.2022 filed by the petitioner.

For Petitioner : Mr.B.Thirunavukkarasu
in all W.Ps

For Respondents : Mr.V.Prashanth Kiran
Government Advocate (Taxes)
in all W.Ps

COMMON ORDER

This common order will govern the captioned six writ petitions.

2. Mr.B.Thirunavukkarasu, learned counsel on record for petitioner in all six writ petitions is before this Court.

3. Short facts are that writ petitioner is a dealer under erstwhile 'Tamil Nadu Value Added Tax Act, 2006 (Act No.32 of 2006)' [hereinafter 'TNVAT Act' for the sake of brevity, convenience and clarity]; that the writ petitioner is in the business of dealing in cashew shell and oil; that there was a deemed assessment under Section 22(2) of TNVAT Act; that on 26.02.2013 and 27.02.2013 Enforcement Wing of the respondent visited the premises of the writ petitioner resulting in tax



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W.P.Nos.33446, 33447, 33448, 33450, 33452 and 33453 of 2022

levy and imposition of penalty; that the writ petitioner assailed the same

by way of a writ petition in this Court vide W.P.No.25511 of 2016; that a

Hon'ble Single Judge in and by order dated 22.07.2016 directed issue of fresh notice under Section 27 of TNVAT Act and also directed the petitioner-dealer to appear before the Original Authority (second respondent) in captioned writ petitions; that post writ petitions, the Original Authority made orders; that the writ petitioner-dealer has assailed the orders by way of statutory appeals under Section 51 of TNVAT Act; that the statutory appeals have been returned as not maintainable owing to being outside the prescribed period of limitation and the condonable period of limitation, namely 30 days from the date of receipt of orders by the writ petitioner and a further 30 days therefrom respectively; that assailing the return of the appeal (certiorari limb) and seeking a mandamus qua the first respondent (Appellate Authority) to hear the appeals, captioned writ petitions have been filed in this Court on 30.11.2022; that it is to be noted that the captioned matters pertain to 6 assessment years, namely AY 2008-2009 to 2013-14 (six successive years); that further granular particulars will be set out infra in this order.



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W.P.Nos.33446, 33447, 33448, 33450, 33452 and 33453 of 2022

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4. Owing to the narrow compass and acute angle on which the captioned writ petition turns Mr.V.Prashanth Kiran, learned Government Advocate (Taxes) accepted notice and all six main writ petitions were taken up with the consent of both sides. To be noted, considering the contention that falls for consideration, a counter affidavit from the Revenue is really not necessary for disposal of captioned writ petitions. Notwithstanding very many averments in the writ affidavits, learned counsel for writ petitioner predicates his argument on one sheet anchor submission and that is, the writ petitioner received the Assessment Orders made by the second respondent (Original Authority) on 11.08.2022 and preferred the statutory appeals under Section 51 of TNVAT Act on 06.09.2022, which is within 30 days from the date of receipt of orders.

5. Responding to this, learned Revenue counsel on instructions and from the copies of the records available submitted that post aforementioned 22.07.2016 order of another Hon'ble single Judge in W.P.No.2251 of 2016 and W.M.P thereat, the writ petitioner was given a pre-revision notice. This pre-revision notice is dated 20.12.2016. This pre-revision notice was duly served on the writ petitioner, the respondent

<https://www.mhc.tn.gov.in/judis>
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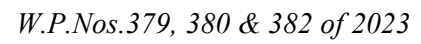
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W.P.Nos.33446, 33447, 33448, 33450, 33452 and 33453 of 2022

received acknowledgement dated 27.12.2016. It was submitted that the writ petitioner did not respond to this notice. Therefore, the second respondent proceeded with Section 27 of TNVAT Act legal drill and made six separate orders dated 27.04.2017, despatched the same on same day and all six orders were received by the writ petitioner on 28.04.2017. Learned Revenue counsel adds that thereafter the writ petitioner had applied for a certified copy of 6 Assessments orders, all dated 27.04.2017, the applications for certified copies were processed and certified copies were made available to the writ petitioner on 11.08.2022 but that cannot be the reckoning date.

6. Learned Revenue counsel produced the postal acknowledgement card to demonstrate that 27.04.2017 Assessment Orders were duly served on the writ petitioner on 28.04.2017 and a scanned reproduction of one acknowledgement card is as follows:

[illegible]



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W.P.No.33446, 33447, 33448, 33450, 33451 and 33453 of 2022

7. A scanned reproduction of the vakalatnama is as follows:



In the High Court of Judicature at Madras

Sd/- *[Signature]* of 20-3-64

No. _____ of 20 _____ on the file of the

Mohan Industries

Versus

The Revenue, District Commissioner of Government
 Tamil Nadu, Madras

...Petitioner

...Respondents

I/We *Mohan Industries*

In the above Petition do hereby appoint and retain

B. THIRUNAVUKKARASU, R. SRIRAM, S.A. ABDUL KHADER

Advocates of the High Court in appeal *in/for* in the above Appeal/Petition and to conduct and prosecute or defend the same and all proceedings that may be taken in respect of any application connected with the same in any decree or order passed therein including all applications for return of documents or the receipt of any money that may be payable to me/us in the said Appeal/Petition and also in appeal under Section 15 of the Letters Patent and application for leave to the Supreme Court of India and in all applications for revision/Judgments

I Certify that the contents of this petition are true and correct and I/We *[Signature]*

In my presence in the Court who appeared perfectly to understand the same and make use of her their signature in my presence.

For **MICHAEL DUDLEY**
B. Mohan Kumar
 Proprietor

Executed before me this 20 day of March 1964.

Accepted

The address for service of the said
MADRAS *S.A. Abdul Khader*
12-50/76

Counsel for *[Signature]*

P.A. to Secy., Government
 Sd/- (Secy. Government)



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W.P.Nos.33446, 33447, 33448, 33450, 33452 and 33453 of 2022

8. This Court compared the signature in the acknowledgement card with the signature in the vakalatnama. Even to the naked eyes, it is explicit that the signatures are the same. This means that the Assessments Orders qua Section 27 TNVAT Act legal drill was duly served on the writ petitioner on 28.04.2017. The sequitur is, the appeals preferred by the writ petitioner (admittedly) on 06.09.2022 are clearly beyond the prescribed period and condonable period of 30 days from the date of receipt of the order and 30 days thereafter.

9. There is yet another facet of the matter. The second proviso to Section 51 of TNVAT Act mandates a pre-deposit as a condition precedent for an appeal and that pre-deposit is 25% of the admitted tax. There is nothing before this Court to demonstrate that this condition has been complied qua 06.09.2022 appeal. In any event, this does not impact the dispositive reasoning but it is only a buttressing facet of the matter. 06.09.2022 appeals filed by the writ petitioner are clearly out of time, well beyond the prescribed period and condonable period. Therefore, this Court finds no ground to interfere with the impugned order.



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W.P.Nos. 32688, 32687, 32686, 32628, 32492 and 32153 of 2022

10. The sum sequitur of discussion and dispositive reasoning

set out supra is all 6 captioned writ petitions fail and the same are dismissed. There shall be no order as to costs.

14.12.2022

Index: yes/no
gpa

To

1. The Appellate Deputy Commissioner of Commercial Tax
O/o.The Appellate Deputy Commissioner of Commercial Tax
Mangakuppam
Cuddalore – 607 001
2. The Commercial Tax Officer
O/o.The Commercial Tax Officer
Panruti (Rural), Panruti
Cuddalore District



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W.P.Nos. 33446, 33447, 33448, 33450, 33452 and 33453 of 2023

M.SUNDAR, J.,

SGP

W.P.Nos.33446, 33447, 33448, 33450, 33452 and 33453 of 2023

14.12.2022

3. Ms.Amirta Dinakaran, learned Government Advocate (Taxes) accepted notice on behalf of both the respondents.

4. As there is no dispute or contestation between learned counsel for writ petitioner-dealer and learned Revenue counsel that captioned three writ petitions are identical/same qua aforementioned common order in six writ petitions with the assessment year alone being different. It will suffice to scan and reproduce the postal envelope, postal acknowledgement card and one of the three vakalatnamas in the cases on hand, which are as follows:



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To.

TVI. Y.J. சேத்யூரி இண்டஸ்ட்ரீஸ்
பிரைவேட்.

YJ CASHEW INDUSTRIES

M. SNEHAKANTI

Proprietor

05.12.2015

Order

சென்னை

05.12.2015

31.3.

05.12.2015

சென்னை

05.12.2015

சென்னை

05.12.2015



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Order - TN 33804/2012-13-2013-14,
2014-15
14.2.17 - CTA

प्राप्ति स्वीकृति (रसीद) ACKNOWLEDGEMENT

रजिस्ट्री
एक पोस्टकार्ड/पैकेट/पार्सल प्राप्त हुआ
* Received * Registered Letter/Postcard/Packet/Parcel
* Insured *
प्राप्त करने वाले का नाम
Addressed to (Name)
+ बीमा का मूल्य (रुपयों में)
+ Insured for Rupees
वितरण को जारी करने वाला
+ डाकघर को भेज दिया गया।
+ Score out the number of days required
+ कोजल बीमा वाले पैकेटों के लिए
+ For Insured & the parcels

For YJ CASHEWS
Proprietrix.

17

अन. पो. 54- (एन)
R. P. 54- (R)

भारतीय डाक विभाग
DEPARTMENT OF POSTS, INDIA

प्रेषक डाकघर
को नाम मारकर
Name stamp of
office of posting

Panruti West,
Pin: 607 106.

प्रेषने वाले
का पता
Sender's
Address

समय-सीमा

विनोद

M3IPCHS-CHD-24 PSD/CBE/13-20-11-13-300/000



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In the High Court of Judicature at Madras

W.P.No. 379 of 2023

No. of 20 on the file of the

YJ Cashew Industries

... Petitioner

Versus

The Appellate Deputy Commissioner
- at Commercial Tax
and another

... Respondents

I/We

YJ Cashew Industries

In the above Petition Appeal do hereby appoint and retain

B. THIRUNAVUKKARASU, R.SRIRAM, S.A. ABDUL KHADER

Advocates of the High Court to appear me/us in the above Appeal/Petition and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein including all applications for return of documents or the receipt to any moneys that may be payable to me/us in the said Appeal/Petition and also in appeal under Section 15 of the Letters Patent and application for leave to the Supreme Court of India and in all applications for review Judgement.

I Certify that the contents of this vakalat of YJ CASHW INDUSTRIES were read out and explained in Tamil

In my presence to the
Executant who appeared
perfectly to understand the same and
made his / her their signature in my presence.

Executed before me this 22 day of Nov 2022

ACCEPTED

The address for service of the said
MADRAS

Counsel for Petitioner

No. 5, 302, Emerald Road,
3rd Floor,
Sunkara Sankar
Chennai - 60



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5. The inevitable sequitur is, captioned writ petitions also fail and the same are dismissed. There shall be no order as to costs.

06.01.2023

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation Case: Yes/No

kmi

To

1. The Appellate Deputy Commissioner of Commercial Tax,
O/o.The Appellate Deputy Commissioner of Commercial Tax,
Manjakuppam,
Cuddalore – 607 001.
2. The Commercial Tax Officer,
O/o.The Commercial Tax Office,
Panruti (Rural), Panruti,
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M.SUNDAR, J

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W.P.Nos.379, 380 & 382 of 2023

06.01.2023