BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:**10.02.2023**

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

T.C(MD)No.2379 of 2008

The State of Tamil Nadu,
represented by
The Deputy Commissioner of Commercial Taxes,
Madurai Division,
Madurai – 625 020. :Petitioner

.vs.

TVL.Murugan and Co,
3/64, Palace Street,
Kombai : Respondent

PRAYER: Tax Case(Revision Petition) filed under Section 38 of the Tamil Nadu General Sales Tax Act to revise the order of the Sales Tax Appellate Tribunal(Additional Bench), Madurai made in Madurai Tribunal Appeal No.497 of 1992, dated 03.12.1992.

For Petitioner :Mr.D.Sasikumar
Addl.Govt.Pleader

For Respondent :Mr.S.Karunakar

O R D E R

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DR.G.JAYACHANDRAN,J
AND
K.K.RAMAKRISHNAN,J

The dealer being aggrieved by the assessment, preferred an appeal before the First Appellate Authority, with a delay. The First Appellate Authority, taking note of the fact that an appeal against the assessment ought to have been filed within 30 days or if any delay, it can be condoned only upto 30 days, two appeals presented by the dealer, was dismissed.

2.Being aggrieved by the same, the dealer has preferred an appeal to the Second Appellate Authority namely, the Tamil Nadu Sales Tax Appellate Tribunal(Additional Bench), Madurai. The Second Appellate Authority, after considering the law governing the issue, had taken a view that right of appeal cannot be curtailed pedantically on the ground of delay and therefore, the order passed by the Appellate Assistant Commissioner was set aside, remanding the case back to the Appellate Assistant Commissioner for fresh disposal with a direction to find out whether there was sufficient cause for the delay in filing the appeal. In other words, the Second

Appellate Authority has directed the First Appellate Authority to hear afresh the condone delay application. Being aggrieved by that order, the present appeal is filed by the Department. Now it is reported that the order impugned in this tax case is given effect to by the First Appellate Authority condoning the delay and entertaining the appeal.

3.On going through the records, this Court finds that the Second Appellate Authority, in fact, has not condoned the delay and only remanded the matter back to the First Appellate Authority to consider the reasons assigned by the dealer for the belated filing of the appeal. For ordering remand, the Second Appellate Authority has assigned valuable reason and the said reason cannot be found fault with, if any dealer has grievance, he has the right of appeal and if there is any delay in filing the appeal, it is open to the Appellate Authority to assess the reason assigned for delay and if it is reasonable, the same can be condoned and if it is not reasonable, the same can be dismissed.

4.Pedantically, the application to condone the delay cannot be dismissed. Therefore, this Court finds no merit in this tax case. Accordingly, the Tax Case(revision) stands dismissed. No costs.

[G.J.,J.] [K.K.R.K.,J.]
10.02.2023

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

The Deputy Commissioner of Commercial Taxes,
Madurai Division,
Madurai – 625 020.

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