IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2024

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.No.2828 of 2024
and
C.M.P.No.20750 of 2024

Sai Krishna Constructions (TN) Pvt. Ltd.,
Represented by its Director,
No.282, NB.S.R.Road, Saibaba Colony,
Coimbatore - 641 025. ... Appellant

-Vs-

The Assistant Commissioner (ST),
Saibaba Colony Assessment Circle,
Coimbatore - 18. ... Respondent

PRAYER : Appeal filed under Clause 15 of Letters Patent, to set aside the order in W.P.No.5016 of 2020 dated 17.10.2022.

For Appellant	:	Mr.A.P.Srinivas
For Respondent	:	Mr.T.N.C.Kaushik Additional Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.)**

This intra Court appeal has been directed against the order passed by the writ Court dated 17.10.2022 made in W.P.No.5016 of 2020.

2. As against the assessment order dated 28.05.2019, the appellant dealer filed a writ petition instead of filing an appeal in the said W.P.No.5016 of 2020.

3. The learned writ Court having heard the learned counsel appearing for the appellant / writ petitioner has concluded that, though various arguments had been advanced on behalf of the writ petitioner, the writ petitioner though had filed the said writ petition beyond the statutory limitation period provided and the order of assessment is dated 28.05.2019, the petitioner was permitted to move the Appellate Authority within a period of four weeks from the date of the order by way of statutory appeal. It was further directed by the writ Court that, if any appeal is filed within a stipulated period, that shall be entertained by the First Appellate Authority without reference to limitation but ensuring compliance of all other statutory conditions, including pre-deposit condition.

4. Aggrieved over the said condition only, this intra Court appeal has been directed which was presented on 22.12.2022.

5. When we questioned Mr.A.P.Srinivas, learned counsel appearing for the appellant as to the infirmity of the order passed by the writ Court which is impugned herein, the learned counsel would contend that, basically the order impugned before the writ Court was challenged on the ground of violation of principles of natural justice as the personal hearing had not been given to the appellant dealer. In order to ascertain the facts, we passed the following order on 27.09.2024:

> *"It is the definite case of Mr.T.N.C.Kaushik, learned Additional Government Pleader appearing for the respondent Revenue that on 18.01.2018 and 11.02.2019, notices had been issued intimating the personal hearing to the appellant / assessee.*
>
> *2. It is the vehement contention of Mr.A.P.Srinivas, learned counsel for the appellant that no such notice or notices had been served on the assessee intimating any personal hearing as claimed by the Revenue. This factor has to be ascertained.*
>
> *3. That apart, in the order of assessment which*

was impugned before the Writ Court, it has been referred that the assessee's authorised dealer had been heard by the Revenue ie., Assessing Authority. This also has to be ascertained.

4. Therefore, in order to ascertain both the above factors, the learned Additional Government Pleader shall produce the relevant records before this Court for perusal on ***30.09.2024.*** *Post the matter on* ***30.09.2024."***

6. Pursuant to the said order, today when the matter is taken up for hearing, Mr.T.N.C.Kaushik, learned Additional Government Pleader appearing for the respondent Revenue has produced the original file, where we were able to find that, the notice of personal hearing dated 11.02.2019 had been issued by the Revenue which was received by the appellant dealer on 13.02.2019 by putting the seal as well as signature of the appellant dealer.

7. That apart, on 19.02.2019, a manuscript reply also had been sent by the appellant dealer to the said notice dated 11.02.2019.

8. When that being so, it cannot be stated that, no opportunity of personal hearing had been given to the appellant dealer, therefore, on that ground, the

writ petition cannot be entertained.

9. Even though arguments were advanced to some extent by Mr.A.P.Srinivas, learned counsel appearing for the appellant, on the merits of the case, we are not impressed with the same, the reason being that, since the learned Judge through the impugned order had permitted the writ petitioner to file the statutory appeal within four weeks time, where further direction also had been given by the writ Court to entertain such an appeal without reference to the limitation, however by ensuring the compliance of all other statutory conditions, including pre-deposit, the question of canvassing the merits of the case before this Court at this juncture does not arise.

10. Moreover, as against the order impugned dated 17.10.2022, as we stated, the appeal has been presented on 22.12.2022, but has been filed only on 14.09.2024, therefore, unnecessarily the appellant dealer has delayed the matter instead of filing appeal by filing the present intra Court appeal, therefore, for all these reasons, we are not inclined to entertain this appeal and the order passed by the learned Judge which is impugned herein dated 17.10.2022 since is to be sustained by giving two weeks time to the appellant to file a statutory appeal

before the appellate forum. Accordingly, this Writ Appeal is dismissed.

11. It is made clear that, within two weeks from the date of receipt of a copy of this order, if no appeal is filed, it is open to the Revenue / Assessing Authority to proceed in accordance with law pursuant to the order impugned before the writ Court. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

12. Registry is directed to return the original impugned order of the writ Court to the learned counsel appearing for the appellant after retaining the photocopy with due acknowledgement.

(R.S.K., J.) **(C.S.N., J.)**
30.09.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

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Note: Issue order copy by 01.10.2024.

To

The Assistant Commissioner (ST),
Saibaba Colony Assessment Circle,
Coimbatore - 18.

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

vji

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