BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) Nos.9870 and 9871 of 2024
and
W.M.P.(MD) Nos.8948, 8949, 8951 and 8952 of 2024

Kanam Latex Industries Pvt. Ltd.,
rep. By its Director,
Abraham Kurian,
6/79B, Puliyoorkurichi,
Thuckalay,
Kanyakumari District.
... Petitioner in both W.Ps.,

/vs./

1.The Appellate Deputy Commissioner of Commercial Taxes,
Tirunelveli District.

2.The Joint Commissioner of Commercial Taxes,
Tirunelveli Division,
Reserve Lane,
Palayamkottai,
Tirunelveli 627 002.

3.The Commercial Tax Officer,
Presently State Tax Officer,
Thuckalay at Kattathurai,
Kanyakumari District. ... Respondents in both W.Ps.,

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for records relating to the order dated 18.11.2019 made in MTMP.Nos.35 and 37 of 2018 in MTSA.Nos.6 and 7 of 2016 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai and the order dated 13.10.2017 made in MTSA.Nos. 6 and 7 of 2016 the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai and quash the same as illegal.

For Petitioner
in both W.Ps., : Mr.Ajmal Khan Senior Counsel for
M/S.Ajmal Associates

For Respondents
in both W.Ps., : Mr.R.Suresh Kumar
Additional Government Pleader

COMMON ORDER

Mr.R.Suresh Kumar, learned Additional Government Pleader takes notice for the respondents in both the Writ Petitions.

2.With the consent of learned Additional Government Pleader for the respondents, these writ petitions are disposed of at the time of admission.

3.Although the learned Additional Government Pleader for the respondents would submit that the writ petitions are belated and are liable to be dismissed, in the light of the recent decision of the Hon'ble Supreme Court in ***Mrinmoy Maity Vs. Chhanda Koley and others*** reported in ***2024 SCC Online SC 551***, the learned Senior Counsel for the petitioner on the other hand would rely on the decision of the Hon'ble Supreme Court in ***Bogidhola Tea and Trading Company Vs. Hira Lal Somani*** reported in ***(2007) 14 Supreme Court Cases 606***.

4.The petitioner, an assessee under the provisions of TNVAT Act, 2006 had suffered adverse assessment order in the hands of the third respondent for these two assessment years as also for two other assessment years. The petitioner had succeeded in the appeal before the First Appellate Authority.

5.Aggrieved by the same, the Commercial Tax Department had filed the following four appeals before the Appellate Tribunal for the respective assessment years:-

S.No.	***Appeal No***	***Assessment Year***
1	*MTSA.No.8 of 2016*	*2007-08*
2	*MTSA.No.7 of 2016*	*2008-09*
3	*MTSA.No.6 of 2016*	*2009-10*
4	*MTSA.No.9 of 2016*	*2010-11*

6.It is a specific case of the petitioner that for the assessment year 2008-09 and 2009-10, by oversight Vakalat was not filed and therefore, the appellate Tribunal by two separate cryptic orders both dated 13.10.2017 has allowed the appeals filed by the Commercial Tax Department.

7.It is submitted that the petitioner has also filed an application to set aside the *ex parte* order by applying the provisions of Order IX Rule 13 of CPC, which has been rejected on the ground that the affidavit has been filed by the Clerk attached to the Advocate of the petitioner.

8.I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Additional Government Pleader for the respondents.

9.Although there is a delay in approaching this Court, I am of the view that the substantive right of an assessee cannot be denied, particularly in a peremptory manner by passing a cryptic order. In my view, the dismissal of the application for restoring the appeal and allowing the appeal of the Commercial Tax Department without any reasonings especially when the order of the Appellate Commissioner is detailed has to be construed as an arbitrary order and therefore, it is liable to be set aside. It could have been different, if the order is passed on merits.

10.That apart, it is informed by the learned Senior Counsel that the appeal for the assessment years 2007-2008 and 2010-11 are still pending in MTSA.No.8 of 2016 and MTSA.No.9 of 2016.

11.Since common issue arises for consideration, I am of the view that the impugned orders can be set aside and the appeals be restored back to the file of the Sales Tax Appellate Tribunal for disposal of all the four appeals together on merits and in accordance with law. The petitioner is directed to file Vakalat and file the notes and submissions, if any, as per the procedure followed by the

Appellate Tribunal. The Appellate Tribunal shall dispose of all the four appeals on merits and in accordance with law as expeditiously as possible.

12.These Writ Petitions stand allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No **22.04.2024**
Internet : Yes / No
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To

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C.SARAVANAN, J.

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