BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.19772 of 2023
and
W.M.P.(MD) Nos.16323 & 20837 of 2023

Tvl. Manoj Pipe Trading Corporation,
Rep. by its Proprietor
Mr.Goutham Chand,
No.19, Patchai Nachiamman Koil Street,
Madurai. ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by the Joint Commissioner (ST),
Madurai Division,
Madurai.

2.The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench),
Madurai-20. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the records pertaining to the impugned proceedings passed by the second respondent in Madurai Tribunal State Miscellaneous Petition No.82/2021 dated 01.09.2022 and quashing the same as arbitrary, invalid and against the principles of natural justice.

For Petitioner : Mr.A.Satheesh Murugan

For Respondents : Mr.J.K.Jayaselan
Government Advocate

ORDER

In this Writ Petition, the petitioner has challenged the impugned order dated 01.09.2022 passed by the second respondent Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) in Madurai Tribunal State Miscellaneous Petition No.82 of 2021.

2. By the impugned order dated 01.09.2022, the Tribunal has allowed above petition filed by the first respondent for condoning the delay of 933 days in re-presenting the appeal filed against the order dated 24.11.2017 passed by the Appellate Deputy Commissioner (ST) (FAC), Madurai (North), Madurai in Appeal No.286/2017(TNVAT).

3. The Appellate Deputy Commissioner (ST) (FAC) had partly allowed and partly dismissed the appeal filed by the petitioner against the Assessment Order dated 31.03.2017 passed by the Assistant Commissioner (CT), Nethaji Road Assessment Circle, Madurai in TIN/33174981045/2015-16.

4. Aggrieved by the same, the first respondent herein filed the appeal before the second respondent Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) with the delay of 118 days as per Section 58 of the TNVAT Act, 2006. It appears that there were certain defects in the appeal field by the first respondent before the Tribunal and therefore, the appeal papers were returned by the Tribunal to the first respondent Joint Commissioner for rectification of the same. After rectification of the defects, the appeal has to be re-submitted on or before 10.09.2018. However, it was re-presented with delay of 933 days only on 31.03.2021. The second respondent Tribunal, by the impugned order, has condoned the delay with the following observations:-

"*To decide this application this tribunal has to see whether the delay of 933 days can be condoned for the reasons stated in the affidavit?*

Regarding maintainability of this application this tribunal is of the view that the judgment of our Honourable High Court relied by the respondent is not applicable to the facts of this case. Because in the case before Honourable High Court the dispute is not in respect of condoning delay in representing the appeal, return for rectifying defects. But it pertains to power of appellate authority to entertain the appeal, which filed after expiry of prescribed period of

> *limitation to file appeal under Section 51 of TNVAT Act 2006. As per the above judgment of our Honourable High Court, Tribunal has no power to extend the period beyond the one provided under the Act. But as per Regulation 6(5) of TNVAT Appellate Tribunal Regulation, 2011, Tribunal can order for registration of appeal, after condoning the delay in representation. Hence this tribunal is of the view that this petition is maintainable.*
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> *On considering nature of the case, the reasons stated by the petitioner/appellant, is not disputed by the respondent as a false one, this tribunal is of the view that the delay of 933 days can be condoned as it is satisfactorily explained.*
>
> *In the result, this petition is allowed.*"

5. The case of the petitioner is that the Tribunal erred in condoning the delay of 933 days, in a casual manner and therefore, the impugned order warrants interference in the hands of this Court under Article 226 of the Constitution of India. It is further submitted that the same Tribunal presided over by the same Additional Departmental Member and the different Additional Judicial Member has dismissed a batch of cases filed by the Commercial Taxes Department by an order dated 03.09.2021, wherein, under similar circumstances in the respective appeals, the Tribunal has come to a conclusion that the delay was not properly explained by the Commercial Taxes Department. It is submitted that

similar order ought to have been passed by the Tribunal in the facts of the present case.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondents.

7. As per Section 58(1)(a) of the TNVAT Act, 2006, any officer prescribed by the Government or any person objecting to an order passed by the Appellate Deputy Commissioner under Sub-Section (3) of Section 51 of the Act, or by the Appellate Joint Commissioner under Sub-Section (3) of Section 52 of the Act, or by the Joint Commissioner under Sub-Section (1) of Section 53 of the Act, may appeal against such order to the Appellate Tribunal, within a period of 120 days, in the case of an officer so prescribed by Government.

8. The first proviso to Section 58(1) of the Act further provides that the Appellate Tribunal may, within a further period of one hundred and twenty days in the case of an officer prescribed by Government and sixty days in the case of any other person, admit an appeal presented after the

expiration of the first mentioned period of one hundred and twenty days or sixty days, as the case may be, if it is satisfied that the appellant had sufficient cause for not presenting the appeal within the first mentioned period.

9. Regulation 7 of the Tamil Nadu Value Added Tax Appellate Tribunal Regulations, 2011 deals with 'Registration of Appeals". Regulation 7(3) of the Tamil Nadu Value Added Tax Appellate Tribunal Regulations, 2011 reads as under:-

> **7. Registration of Appeals.**—
>
> (1) .....
>
> (2) .....
>
> (3) If the Secretary is of the view that the appeal does not conform to the requirements of Act, the rules and these regulations, he shall call upon the party by a notice in Form – A in the Appendix to these Regulations, to remedy the defects within a reasonable period to be specified by him and if the defect is remedied within the period allowed, the Secretary shall cause the appeal to be registered:
>
> Provided that the Secretary may, for sufficient cause extend the period for remedying the defects.

10. It is the case of the petitioner is that since the appeal was not re-presented in time and there was no sufficient cause for condonation of the delay of 933 days in re-presenting the appeal, the application ought not to have been allowed by condoning the delay.

11. It is noticed that the appeal was originally filed with a delay of 118 days, which is within the condonable period under Section 58 of the TNVAT Act, 2006. There were defects in the appeal filed by the first respondent and the time for re-submission after rectification of the defects has expired on 10.09.2018. It was re-submitted on 31.03.2021 with the delay of 933 days.

12. It is to be noted that out of 933 days, the delay of almost 365 days can be attributed to the lockdown imposed by the Government due to the outbreak of Covid-19 Pandemic in 2020 with effect from 24.03.2020, leaving 568 days (933 – 365).

13. A reading of Regulation 7(3) of the Tamil Nadu Value Added Tax Appellate Tribunal Regulations, 2011 indicates that there is no

restriction in time. The second respondent Secretary is required merely to consider whether there is sufficient cause for the delay to cure the defects before re-presenting the appeal within time.

14. The copy of the affidavit filed by the Commercial Tax Department in support of the Miscellaneous Application for condonation of delay of 933 days in re-presenting the appeal, has also not been filed by the petitioner before this Court.

15. Therefore, I see no error in the impugned order. The respondent was not under any impediment while condoning the delay of 568 days excluding the 365 days during the Covid-19 Pandemic as the Commercial Tax Department is overburdened with litigations and it is not easy to adhere the time lines.

16. That apart, the appeal papers were returned on 10.09.2018, just a few months after the implementation of the GST Acts, w.e.f. 01.07.2017. There were reorganizational issues and a slew of transfers of officers, which would also have caused delay in re-presenting the appeal papers that were returned to cure the defects.

17. Considering the over all facts and circumstance of the case, I am of the view, the impugned order does not warrant any interference. Therefore, this Writ Petition is liable to be dismissed. However, I leave it open for the Tribunal to decide whether the first respondent has made out the sufficient cause for condonation of delay of 118 days in filing the appeal.

18. In the result, this Writ Petition stands dismissed with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

03.07.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

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Copy To:

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The State of Tamil Nadu,
Madurai Division, Madurai.

2.The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench),
Madurai-20.

C.SARAVANAN, J.

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