BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD) No.23854 of 2024

Tvl.Sri Kannan Mines and Mineral,
rep.by its Proprietrix Selvi Ramachandran.. Petitioner

-vs-

1.The State Tax Officer (ST),
Inspection, Group VI Erode,
Office of the Joint Commissioner (ST),
Intelligence Erode.

2.The Deputy Commissioner (ST) (GST) (Appeal),
Integrated New Commercial Taxes Building,
3rd Floor, S. F. No.400/1,7,8,46 Pudur B Village,
Erode 638 002. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, to call for the records in ROC.No.2175/2024/A1, dated 09.07.2024, on the file of the 2nd respondent and quash the same as illegal, arbitrary and error of law and against the principles of natural justice and direct the 2nd respondent to entertain the appeal for the assessment year 2019-2020 and decide the same on merits and in accordance with the law.

For Petitioner : Mr.A.Thiyagarajan,
Senior Advocate,
for Mr.S.Karunakar.

For Respondents : Mr.R.Suresh Kumar,
Addl. Govt. Pleader.

ORDER

This Writ Petition has been filed, challenging the proceedings of the second respondent , dated 09.07.2024 for the A.Y. 2019-2020, whereby the appeal filed by the petitioner on 14.05.2024 was rejected on the premise that the same was filed beyond the period of limitation.

2. It is submitted by the petitioner that on receipt of order of adjudication, dated 22.12.2023, the petitioner was of the view that it suffers from error apparent on the face of the record, thus filed a rectification petition on 14.03.2024 under Section 161 of the TN GST Act,2017. The same was rejected on 25.04.2024. Aggrieved by the order of rejection of the rectification petition, an appeal was filed challenging the same on 14.05.2024. It was

emphasised that the appeal so preferred was not against the original order of adjudication, dated 22.12.2023, instead against the order, dated 25.04.2024, under Section 161, rejecting the application for rectification of error apparent on the face of the record.

3. It is submitted by the learned counsel for the petitioner that if the limitation is reckoned from 25.04.2024 when the rectification application was rejected, the appeal was well within time and, thus, the impugned order, rejecting the appeal on the assumption that it was beyond the statutory period is based on a gross misconception of the subject matter of appeal.

4. Learned Additional Government Pleader, appearing for the respondents, would submit that even in Form GST APL-01, the order, which is shown as the subject of challenge, is the assessment order, dated 22.12.2023, and, thus, the order of the appellate authority in rejecting the appeal as barred by limitation is in order.

5. Learned counsel for the petitioner would submit that they had attempted to show that the order, which was challenged, was the rejection of rectification vide order, dated 25.04.2024, but the system automatically

generates the date of the order of the original assessment/adjudication, i.e., 22.12.2023. It was then submitted that if one goes through the grounds of appeal raised, it would be evident and clear that the challenge was to the rejection of application under Section 161 of the Act. The relevant portion of grounds of appeal, as pointed out by the learned counsel for the petitioner, is extracted hereunder :

> *"The appellant submits that on receiving the application for rectification, the assessing authority without considering the same judicially had rejected the application vide his proceedings dated 26.04.2024.*
>
> *Aggrieved by the above said order, the appellant is filing the present appeal before the Hon'ble Deputy Commissioner (GST)"*

6. This Court is of the view that apparently the appellate authority has proceeded on a mistaken notion that the appeal was preferred against the order, dated 22.12.2023, whereas the appeal was filed against the order of rejection of petition under Section 161 of the Act, dated 25.04.2024. Therefore, this Court is inclined to remand the matter back to the first appellate authority to re-consider the appeal and pass orders in accordance with law. It is made clear that this Court has not expressed anything on merit,

including the maintainability of the appeal by the petitioner against the order of rejection under Section 161 of the Act. It is open to the petitioner to raise all the grounds against the order of rejection under Section 161 of the Act, dated 25.04.2024, before the appellate authority.

7. Writ Petition stands disposed of accordingly. No costs. Consequently, the connected W.M.P.(MD) Nos.20208 and 20209 of 2024 are closed.

04.10.2024

(3/6)

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

dixit

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MOHAMMED SHAFFIQ, J.

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