IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2015

CORAM:

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.29629 of 2015
and M.P.No.1 of 2015

Tvl.Sakthi Hardware [Petitioner]
Rep by its proprietor G.Sivabooshnam
15 Factory Road Nellikuppam
Cuddalore Taluk

Vs

1 The Joint Commissioner of
Commercial Taxes Vellore Division I Floor
No.4 Bharathiar Salai Fort Round
Vellore 632 001

2 The Assistant Commissioner (CT)
Cuddalore Taluk
Commercial Taxes Buildings
Cuddalore 607 001

3 The Additional Commissioner (RP)
O/o.The Principal Secretary and
Commissioner of Commercial Taxes Chepauk
Chennai 5 [Respondents]

Prayer: This Writ Petition under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified mandamus to call for the records in respect of the order R.C.A3/4254/2015 dated 17.8.2015 issued by the 1st respondent to quash the same and direct the 1st respondent to entertain the Revision Petition in Form Y dated 4.7.2015 filed by the petitioner and dispose of it on its merits in accordance with law

For petitioner Mr.S.P.Asokan
For respondents Mr.S.Manoharan Sundaram, AGP(T)

ORDER

Heard the learned counsel for the petitioner and Mr.S.Manoharan Sundaram, learned Additional Government Pleader (Taxes), who took notice for the respondents and with their consent, the main writ petition itself is taken up for consideration.

2. This writ petition has been filed for quashing the order of the 1st respondent made in R.C.A3/4254/2015 dated 17.8.2015 and to direct the 1st respondent to entertain the Revision Petition in Form Y dated 4.7.2015 filed by the petitioner and dispose of it on its merits in accordance with law.

3. For the assessment year 2013-14, an assessment order came to be passed by the 2nd respondent on 30.10.2014, against which a rectification petition under Section 84 of the Tamil Nadu Value Added Tax, 2006 dated 27.01.2015 was filed by the petitioner requesting the 2nd respondent to rectify certain apparent errors in the said assessment order, which got rejected by the order of the 2nd respondent dated 18.03.2015. Aggrieved over the said order, the petitioner challenged the same by way of revision petition in Form Y dated 04.07.2015 under Sub section (1) of Section 54 of the TNVAT Act, before the 1st respondent. The 1st respondent, instead of entertaining the revision petition filed by the petitioner, quoting Section 24(4) of the TNVAT Act, rejected the same as not maintainable. Hence the petitioner is before this Court.

4. The learned counsel for the petitioner submits that an appeal has not been provided in Section 51 and 52 of the TNVAT Act against the order of the assessing officer, rejecting a petition filed under Section 84 of the Act seeking rectification of that order. According to him, as per Section 54 of the TNVAT Act, any person objecting to an order passed or proceeding recorded under the Act for which an appeal has not been provided in Section 51 or 52 may file an application for revision of such an order or proceeding to the Joint Commissioner/first respondent. Hence, the 1st respondent ought to have entertained the revision petition filed by the petitioner under Section 84 of the Act. It is his further submission that sub section (5) of Section 84 shall apply only when an order of rectification is made and not when the authority concerned refuses to pass an order of rectification. That apart according to him, the 1st respondent has failed to appreciate that the revision petition filed by the petitioner was against the rejection order of the 2nd respondent for rectification under Section 84 of the TNVAT Act and not against the original order of assessment.

Based on these, the learned counsel for the petitioner has sought for allowing of the writ petition.

5. This Court finds force in the contention of the learned counsel for the petitioner for the reason that the 1st respondent, instead of entertaining the revision petition, which was filed as

against the rejection order of the 2nd respondent for rectification under Section 84 of the TNVAT Act and not against the original order of assessment, without proper application of mind, quoting that the order in dispute was passed under Section 22(4) of the TNVAT Act and hence the appropriate remedy would be to file an appeal before the appellate authority, rejected the revision petition as not maintainable, which is improper and against the provisions of the Act. For this reason alone, this Court is of the view that the impugned order is liable to be set aside and the matter has to be remitted back to the authority for passing orders on the revision petition.

6. Accordingly, the impugned order dated 17.08.2015 passed by the 1st respondent is set aside and the matter is remitted back to the 1st respondent for entertaining the revision petition filed by the petitioner. It is made clear that the petitioner is permitted to re-present the papers to the 1st respondent and on receipt of the same, the same shall be entertained by the 1st respondent and necessary orders on merits be passed by the 1st respondent within a period of four weeks thereafter, after affording due opportunity to the petitioner.

The writ petition is disposed of with the above directions. No costs. Connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
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O/o.The Principal Secretary and
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Chennai 5

+1 cc to Mr.S.P.Asokan, Advocate sr.51352
+1 cc to the Special Government Pleader (Taxes)
sr.51371

aa06/10/2015