IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.33242 and 33243 of 2015
and
M.P.Nos.1 of 2015

Suryadev Alloys & Power Private Limited
rep. by its Director
Govind Gagoria Survey No. 298/2
Gummidipoondi Taluk
New Gummidipoondi-601 201. ... Petitioner in both Petitions

Vs

1. The Appellate Deputy Commissioner (CT)
Chennai (North) FAC Third Floor
CT Annexe Building 1 Greams Road
Chennai-6.

2. The Commercial Tax Officer
Gummidipoondi Assessment Circle
38 GNT Road Second Floor
Gummidipoondi. ... Respondents in both Petitions

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for the records of the first respondent in N.Dis.Nos. 1084, 1085/2015-A1 dated 9.10.2015 and quash the same under Article 226 of the Constitution of India and direct the first respondent to admit and dispose the appeals on merits filed by the petitioner.

For Petitioner : Mr.R.Kumar

For Respondents : Mr.S.Kanmani Annamalai,
Additional Government Pleader (T)

O R D E R

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who took notice for the respondents and with their consent, the main writ petitions are taken up for disposal.

2. The petitioner has come forward with these writ petitions challenging the orders of the 1st respondent made in N.Dis.Nos. 1084, 1085/2015-A1 dated 9.10.2015 and to direct the 1st respondent to admit and dispose the appeals on merits filed by the petitioner.

3.1 The petitioner is a registered dealer under the TNVAT Act, 2006 with TIN No.33921702760. They are also registered under the CST Act and filing monthly returns under the provisions of the Act. According to the petitioner, they are originally an assessee on the files of the Assistant Commissioner (CT), Ponneri Assessment Circle. After reorganisation of assessment circles, the registration file was transferred to the Commercial Tax Officer, Gummidipoondi Assessment Circle, the 2nd respondent herein.

3.2 The petitioner being a manufacture and dealer in M.S.Billets and TMT Bars, effects local, inter-state sales, stock transfer to consignment agent, stock transfer to own branch situate in other State. The petitioner is also doing high sea sales under bond transfer. For the assessment years in question, the petitioner reported their total and taxable turnover under the CST Act, however, the 2nd respondent by proceedings dated 31.03.2015, determined the total and taxable turnover. Subsequently, the petitioner filed declarations and requested the 2nd respondent to revise the assessments so made under Section 84 of the Act, which were considered by the 2nd respondent, who re-determined the same, by proceedings dated 08.06.2015. Thereafter, pursuant to the rectification of defects by the petitioner, the 2nd respondent re-determined the total and taxable turnover by proceedings dated 31.07.2015. Since the 2nd respondent has not considered the documents filed in respect of bond transfer and direct export sales in his proceedings, the petitioner preferred appeals before the 1st respondent under Section 51 of the Act read with Section 9(2) of the CST Act, 1956. However, the 1st respondent has returned the appeal papers filed by the petitioner on 09.10.2015 on the ground that the appeals were filed based on the revised assessment orders made under Section 84 of the Act. Aggrieved over the same, the petitioner is before this Court.

4. The learned counsel for the petitioner would submit that the 1st respondent has failed to consider that the assessment proceedings passed by the 2nd respondent are under Section 22 of the Act read with Section 9(2) of the CST Act, 1956 and Section 84 of the Act empowers the 2nd respondent to revise the assessments passed under Section 22 of the Act and they are not assessments made under Section 84 of the Act. Further, as per Section 84(5) of the Act, the appeal provision shall apply to the rectification order passed under this Section and the 1st respondent has failed to appreciate this provision and returned the appeal papers. Hence, it is violative of the principles of natural justice. According to the learned counsel for the petitioner, the proceedings dated 31.07.2015 are in continuation of the assessment proceedings passed under Section 22 of the Act. That apart according to him, when Section 84 permits the 2nd respondent to rectify an error apparent on the face of the record and after rectification, the demand raised in the orders passed under Section 22 of the Act got reduced, the same would amount to existence of the orders passed under Section 22 of the Act. Hence, the impugned orders returning the appeals filed against such orders are not sustainable in law.

5. On the other hand, the learned Additional Government Pleader, appearing for the respondents would submit that since Section 54 of the TNVAT Act provides for revision against the order passed under Section 84 of the Act, the 1st respondent has rightly returned the appeal papers to the petitioner and hence he prayed for dismissal of the writ petitions.

6. I have considered the submissions made by the learned counsel on either side and perused the entire materials available on record.

7. Originally, assessment orders were passed for the assessment year in question. Aggrieved over the same, he filed rectification petitions under Section 84 of the Act before the 2nd respondent, in and by which, orders were passed reducing the taxable turnover for the respective years. Since the documents filed by the petitioner in respect of certain aspects have not been considered by the 2nd respondent, the petitioner filed appeals before the 1st respondent under Section 51 of the Act read with Section 9(2) of the CST Act, 1956, remitting 25% of the disputed tax for each of the assessment years. The 1st respondent, while returning the appeal papers by the impugned orders, has stated that the appeals are not maintainable, since revision will only lie as against the orders under Section 84 of

the Act.

8. When this Court posed a question as to whether the petitioner is willing to go before the revisional authority, the learned counsel for the petitioner would submit that sufficient time may be granted to the petitioner and the revision may be directed to be entertained without raising any issue with regard to limitation.

9. In view of the above, the petitioner is permitted to file revision petitions under Section 54 of the TNVAT Act, along with stay applications, as against the orders passed under Section 84 of the TNVAT Act, within a period of two weeks from the date of receipt of a copy of this order and on such filing, without raising any issue with regard to limitation, the revisional authority shall entertain the same and pass appropriate orders on merits and in accordance with law on the stay applications, within a period of two weeks thereafter. The revision petitions shall also be taken up for hearing and the same are directed to be disposed of,, on merits and in accordance with law, within a period of six weeks thereafter,after affording due opportunity to the petitioner. It is made clear that pending consideration of the stay applications by the revisional authority, there shall not be any recovery proceedings against the petitioner, since the petitioner had already remitted 25% of the disputed taxes.

The writ petitions are disposed of accordingly. No costs. Connected miscellaneous petition are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Appellate Deputy Commissioner (CT)

Chennai (North) FAC Third Floor
CT Annexe Building 1 Greams Road
Chennai-6.

2. The Commercial Tax Officer
Gummidipoondi Assessment Circle
38 GNT Road Second Floor
Gummidipoondi.

+1cc to Mr.R.Kumar, Advocate, S.R.No.60312
+1cc to the Government Pleader, S.R.No.60406
+ 1 cc to Mr.R.Kumar, Advocate Sr 60313.

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CA(23/11/2015)