IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
and
THE HONOURABLE MRS.JUSTICE S.VIMALA

W.A.No.1651 of 2015
and
M.P.No.1 of 2015

MI Steel Processing India Pvt. Ltd.,
Rep. By Director Makoto Katsuno
SF No.16/6A&6B, Oragadam -
Wallajabad High Road,
Varanavasi Village, Wallajabad,
Kancheepuram District - 631 064. .. Appellant/Petitioner

..Vs..

1. The Assistant Commissioner (CT)
Kancheepuram Assessment Circle,
Kancheepuram - 631 502.

2. The Appellate Deputy Commissioner
(Chennai-South),
3rd Floor, PAPJM Building Annexe,
No.1, Greams Road, Chennai - 6. .. Respondents

PRAYER: Writ Appeal filed under clause 15 of the Letters Patent Act praying to set aside the order dated 12.10.2015 passed by the Learned Single Judge in W.P.No.24425 of 2015 on the file of this Court.

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the Assessment Order TIN/33111644181/2013-14 dated 22.12.2014 passed by the 1st respondent culminating in Order in A No.54/2015/VAT dated 18.06.15 passed by the 2nd resp. and quash the same as arbitrary and illegal and direct the 1st respondent to return the amount of Rs. 33,61,000/- and release the Bank Guarantee furnished for Rs.33,61,000/-

For Appellant : Mr.Joseph Prabakar

For Respondents : Mr.S.Kanmani Annamalai

J U D G M E N T

(Judgment of the Court was delivered by S.Vimala, J)

This Writ Appeal has been filed challenging the order passed by the learned Single Judge in W.P.No.24425 of 2015 dated 12.10.2015.

2. The Writ Petition was filed seeking writ of certiorarified Mandamus (a) to call for the records relating to assessment order dated 22.12.2014 (passed by the first respondent) and the order dated 18.06.2015 passed by the second respondent and to quash the same as arbitrary and illegal (b) direct the first respondent to return the amount of Rs.33,61,000/- and (c) to release the Bank Guarantee furnished for Rs.33,61,000/-.

Brief Facts:

3. The appellant is engaged in the business of trading of steel coils and manufacturing of automative parts. The appellant is registered under Tamil Nadu Value Added Tax 2006 and Central Sales Tax Act 1956. The appellant awarded two contracts to M/s.Fujita Corporation for Rs.32.01 and Rs.1.60 crores respectively. Thereafter, M/s.Fujita Corporation applied for the grant of two certificates in "Form S" towards non deduction of TDS on the value of contracts for Rs.32.01 and Rs.1.60 crores respectively, obtained the same and produced before the appellant. Accordingly, the appellant did not deduct TDS on the said amount.

4. The first respondent issued a notice dated 15.12.2014 stating that the certificate issued to Fujita corporation is invalid and consequently directed the appellant to pay the TDS. Even before hearing the appellant, the assessment order itself was passed by the assessing officer.

5. Aggrieved by the assessment order for the year 2013-2014 the appellant preferred appeal before the second respondent along with an application for stay. As per the mandate of Section 51 (1) of the TANVAT Act 2006, the appellant paid an amount of Rs.16,80,500/- representing 25% of the disputed tax amount. By the order, dated 26.03.2015, the second respondent, while passing the order of stay directed the appellant to pay further amount of Rs.16,80,500/- being 25% of the disputed tax amount. The Appellate Authority further directed the appellant to furnish the Bank Guarantee for the remaining 50% of the

disputed tax amount amounting to Rs.33,61,000/-. The appellant complied with all the conditions and deposited the amount as directed.

6. The appellate authority (the second respondent) dismissed the appeal on the sole ground that the issue involved namely TDS arising under Section 13 of TNVAT Act, 2006 cannot be the subject matter of assessment under Section 27 of the TNVAT Act, 2006 and therefore the dispute cannot be the subject matter of appeal under Section 51 of the TNVAT ACT, 2006 and hence the appeal is not maintainable.

6.1. The first respondent passed an order of assessment dated 22.12.2014. This order was passed without giving an opportunity of hearing to the appellant. Claiming that the said order is a non speaking order, the assessment order dated 22.12.2014 came to be challenged in the writ petition.

7. The learned Single Judge allowed the Writ Petition and directed the second respondent to return the appeal papers to the petitioner within a period of two weeks from the date of receipt of the copy of the order and the petitioner was permitted to file a revision petition.

8. It is the grievance of the learned counsel for the appellant that the learned single Judge having allowed the Writ Petition should have directed the second respondent to return the amount which was paid (a) at the time of filing of the appeal to the extent of Rs. 16,80,500/- and (b) at the time of complying with the conditional order of stay to the extent of Rs.16,80,500/-. It is his further grievance that the writ Court should have set aside the order of the first respondent i.e. Assessment order dated 22.12.2014.

9. It is the contention of the respondents that the writ appeal itself is not maintainable as the appellant cannot have any grievance against the order allowing the Writ Petition.

10. No doubt the writ petition has been allowed; but the question is whether it is allowed in toto or in piece meal is the issue. A perusal of the order reveals that out of several relief claimed only part of the relief has been granted and the remaining relief is not granted. Therefore, the contention that the writ appeal is not maintainable on the ground that writ petition has been allowed cannot be accepted.

11. The next issue to be considered is whether the amount paid by the appellant ought to have been directed to be returned by the second respondent.

12. The contention of the learned counsel for the appellant is that when the appeal filed under Section 51 of the TNVAT Act, 2006 is dismissed as not maintainable, the second respondent should have ordered return of the amount which was paid at the time of (a) filing of the appeal (b) complying with the conditional order of stay. In order to appreciate this contention it is necessary to find out whether the appeal was dismissed (a) on account of technical reasons (b) on account of lack of jurisdiction or (c) on account of lack of merits. If the appeal had been dismissed on the merits of the matter, then the appellant may or may not be entitled to ask for return of the deposited amount depending upon the context under which he was asked to deposit the amount. But, when the appeal is dismissed on the ground of lack of jurisdiction whether the appellate authority as well as the writ Court is justified in not ordering return of the amount is the issue canvassed in this appeal. In order to appreciate this contention it is necessary to find out the relevant reasoning rendered while dismissing the appeal/writ petition.

13. There is a clear finding in the order passed by the second respondent that the proceedings under Sections 22, 24, 26, 27, 28, 29,34 and 40(2) alone are appealable under Section 51 of the TNVAT Act, 2006 and the challenge regarding wrong deduction of TDS and the deduction of TDS under Section 13 of the TNVAT Act 2006 cannot form part of the assessment under Section 27 of the Act and therefore the appeal is not entertainable. The decision was not on the merits of the subject matter but on the entertainability of the subject matter itself. This finding is clearly on the jurisdiction of the second respondent and when the second respondent held that there is no jurisdiction to entertain the appeal itself, then contemporaneously the Appellate Authority should have ordered return of the amount paid under the orders of the Second respondent.

14. The issue relating to jurisdiction may govern issues relating to territorial jurisdiction, jurisdiction over subject matter and jurisdiction over the persons concerned. So far as this case is concerned the jurisdiction is with reference to the subject matter itself. When the second respondent held that there is no jurisdiction to adjudicate on the issues raised, then the consequential orders passed are also without jurisdiction and it is a nullity. It is settled law that any order passed without jurisdiction is non-est in the eye of law. Therefore, the second respondent should have ordered the return of amount which was already paid by the appellant herein. Therefore, the claim of the appellant that the learned single judge ought to have specifically directed the second respondent to return the amount is correct and it has to be accepted.

15. In the result, the writ appeal is partly allowed. The order passed in Writ petition to the extent to which relief is not granted is fulfilled and the ungranted relief of return of the amount to the extent of Rs.33,61,000/- is ordered.

16. It is represented that the second respondent has already returned the papers to the appellant. The learned counsel for the appellant seeks two weeks time to prefer the revision petition. Accordingly, the appellant is granted two weeks time to file the revision petition within a period of two weeks i.e. from the date of receipt of a copy of this order. The ***First** respondent shall return the amount of Rs.33,61,000/- to the appellant within a period of ***two** weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS VI)
Dated : 03.02.2016

***Corrected as per order of this Court dated 07.03.2016**
Sd/- Assistant Registrar (CS-VI)
Dated : 15.03.2016

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner (CT)
   Kancheepuram Assessment Circle,
   Kancheepuram - 631 502.

2. The Appellate Deputy Commissioner
   (Chennai-South),
   3rd Floor, PAPJM Building Annexe,
   No.1, Greams Road, Chennai - 6.

To be substituted to the order already despatched on 11.02.2016.

1 cc to Mr.Joseph Prabakar, Advocate, sr.14415

1 CC to Special Government Pleader, SR 14534
+1cc to the Special Government Pleader(T),S.R.No.2020(19.05.2016)

W.A.No.1651 of 2015

sr(CO)
srg(04/02/2016)
PSI 15.03.2016