IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.2.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

WRIT APPEAL NO.828 OF 2015 AND MP.NO.1 OF 2015

M/s.Sunrise Chennai Distributors
Pvt.Ltd., Chennai-4. ...Appellant/Petitioner

Vs

The Commercial Tax Officer,
T.Nagar Assessment Circle,
Chennai-6. ...Respondent/Respondent

APPEAL under Clause 15 of the Letters Patent against the order dated 16.2.2015 made in W.P.No.3820 of 2015.

Writ Petition filed under Article 226 of The Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in TIN No.33631562900/ 2013-14 dated 14.1.2015 and quash the above impugned proceedings under TNVAT Act and to direct the respondent to pass revised orders by providing an opportunity of personal hearing based on the representations made by the petitioners on 19.1.2015

For Appellant : Mrs.G.Thilagavathi

For Respondent : Mr.V.Haribabu, AGP (T)

JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN,J

This writ appeal arises out of an order passed by the learned Judge dismissing a writ petition filed by the appellant/assessee on the ground of availability of an alternative remedy.

2. Heard Mrs.G.Thilagavathi, learned counsel for the appellant and Mr.V.Haribabu, learned Additional Government Pleader (Taxes) for the respondent.

3. The assessee/appellant applied for registration in February 2014 under the Tamil Nadu Value Added Tax Act, 2006. The certificate of registration was received on 10.4.2014. The password to enable the appellant to receive on-line assessment was given, according to the appellant, on 30.6.2014.

4. Therefore, the input tax credit availed by the assessee was sought to be reversed by the Assessing Officer, by an order dated 15.10.2014. This order was challenged in a writ petition in W.P.No.30088 of 2014. The said writ petition was disposed of by a learned Judge by an order dated 19.11.2014, directing the respondent to consider the application filed under Section 84 of the said Act for rectification.

5. In pursuance of the said order, the Assessing Officer passed a fresh order dated 14.1.2015. By this order, the respondent again reversed the input tax credit claimed by the appellant holding that the registration certificate was issued within the time limit prescribed in Rule 5(1)(a) of the Tamil Nadu Value Added Tax Rules, 2007. The question as to whether the appellant/assessee was prevented from filing manual returns and the question as to whether the password was given belatedly, were not considered in the said order of rectification passed under Section 84. Hence, the appellant came up with a writ petition in W.P.No.3820 of 2015. The same was dismissed by the learned Judge holding that the appellant has a remedy of revision under Section 54 of said Act. Therefore, the assessee is before us.

6. It is true that there is a remedy of revision. But, a revisional remedy is not exactly equivalent to an appellate remedy. Moreover, the question in this case is as to whether the appellant was given password to enable them to file a return online only belatedly and the question as to whether the appellant was not allowed to file manual returns are questions that were not even gone into in the order passed under Section 84. These questions were crucial to the decision with regard to the reversal of input tax credit.

7. Therefore, there is a clear question of non application of mind to a very important fact by the Assessing Officer, both in the original order and in the order passed under Section 84. In such circumstances, the appellant could not have been driven to the remedy of revision under Section 54.

8. In the light of the above, the writ appeal is allowed and the order in the writ petition is set aside. The order of the Assessing Officer dated 14.1.2015 is set aside. The matter is remitted back to the Assessing Officer for a fresh finding with regard to the question as to whether the appellant was issued with a certificate of registration within time and as to whether the appellant was prevented from filing online returns or manual returns, as the case may be. Thereafter, the respondent shall pass fresh orders. No costs. Consequently, the above MP is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
T.Nagar Assessment Circle,
Chennai-6.

+1cc to M/S.G.Thilakavathi, Advocate, S.R.No.9511
+1cc to the Government Pleader, S.R.No.9589

W.A.No.828 of 2015
and MP.No.1 of 2015

rsi(CO)
srg(27/02/2016)