IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2016

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.37211 of 2015
and M.P.No.1 of 2015

S.Sakthivel ... Petitioner

Vs.

1.The Appellate Deputy Commissioner (CT),
1, Commercial Taxes Buildings Sub Jail Road,
Manjakuppam,
Cuddalore - 607 001.

2.The Commercial Tax Officer,
Cuddalore Taluk Assessment Circle,
Commercial Taxes Buildings,
Cuddalore - 607 001. ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records in respect of the Appellate Order Appeal No & Year 326/2014 VAT dated 01.09.2015 passed by the 1st respondent in respect of the assessment year 2009-10 under the TNVAT Act 2006, quash the same and direct her to pass a fresh appeal order in respect of the assessment order TIN No.33844402993/2009-10 dated 28.08.2014 as corrected in the order TIN No.33844402993/2009-10 dated 03.11.2014 passed by the 2nd respondent in accordance with the law after due consideration of the petitioner's objections to the disputed turnover of Rs.89,63,132/- included in the said orders raised in his appeal filed before the 1st respondent.

For Petitioner : Mr.S.P.Asokan
For Respondents : Mr.Manoharan Sundaram, Additional Government Pleader (Tax)

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorarified mandamus to call for the records in respect of the Appellate Order Appeal No & Year 326/2014 VAT dated 01.09.2015 passed by the 1st respondent in respect of the assessment year 2009-10 under the TNVAT Act 2006 and to quash the same and direct the 1st respondent to pass a fresh appeal order in respect of the assessment order dated 28.08.2014 as corrected in the order dated 03.11.2014 passed by the 2nd respondent in accordance with the law after due consideration of the petitioner's objections to the disputed turnover.

2.The 2nd respondent passed the original assessment order dated 28.08.2014, which was served on the petitioner on 31.08.2014. Subsequently, the petitioner filed an appeal under Section 84 of the TNVAT Act for rectifying some defects. The said application was allowed by the 2nd respondent and challenged both the orders (i.e.) 28.08.2014 and 03.11.2014, which were served on 31.08.2014 and 13.11.2014 respectively. The petitioner had filed the appeal before the 1st respondent. The 1st respondent by his impugned order dated 01.09.2015 dismissed the appeal stating that the petitioner has not challenged the original assessment order dated 28.08.2014 within 30 days from the date of receipt of the copy of the order. In the order passed in the application filed under Section 84 of the TNVAT Act, the 2nd respondent had rectified some defects found in the order. Further, the learned counsel submitted that the original assessment order had merged with the rectified order dated 03.11.2014.

3.Mr.Manoharan Sundaram, learned Additional Government Pleader (Tax) appearing for the respondents submitted that the 1st respondent may be directed to entertain the appeal and decide the same on merits.

4.Having regard to the submissions made by the learned counsel on either side, since the original assessment order dated 28.08.2014 merged with the order passed on 03.11.2014, the respondent can entertain the appeal filed by the petitioner and decide the same in accordance with law. Accordingly, the impugned order dated 01.09.2015 passed by the 1st respondent is set aside and the matter is remanded back to the 1st respondent for fresh consideration. The 1st respondent is directed to entertain the appeal filed by the petitioner and decide the same on merits and in accordance with law.

5.With these observations, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Appellate Deputy Commissioner (CT),
1, Commercial Taxes Buildings Sub Jail Road,
Manjakuppam,
Cuddalore - 607 001.

2.The Commercial Tax Officer,
Cuddalore Taluk Assessment Circle,
Commercial Taxes Buildings,
Cuddalore - 607 001.

+1 cc to Special Government pleader(Taxes) High Court,
Madras Chennai sr.12855

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aa09/03/2016