IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:14.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.24238 of 2016 and

WMP.Nos.20707 & 20708 of 2016

M/s.Lindstrom Services India Pvt. Ltd.,
Represented by its Authorised Signatory,
Mr.Aswin Nair, Dairy Road, Ambattur.
Chennai - 600 098. .. Petitioner

Vs.

1.The Assistant Commissioner (CT),
Villivakkam Assessment Circle,
5, High Court Colony (South), Chennai - 600 049.

2.The Appellate Deputy Commissioner (CT)
Chennai (South), PAPJM Building Annex,
No.1, Greams Road, Chennai - 600 006. .. Respondents

Prayer:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records on the files of the 1st respondent herein TIN: 33711365267/2012-13, dated 31.07.2014 and consequential order dated 31.12.2015 and quash the same as against the principle of law and natural justice.

For Petitioner : Mrs.C.Rekha Kumari
For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader (Taxes)

ORDER

Heard Mrs.C.Rekha Kumari, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice on behalf of the respondents and with their consent, the Writ Petition itself is taken up for final disposal.

2.The petitioner is a registered dealer on the file of the 1st respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and in this writ petition, the petitioner has challenged the assessment order dated 31.07.2014 for the year 2012-2013 and the order passed by the 1st respondent dated 31.12.2015 rejecting the petitioner's application filed under Section 84 of the TNVAT Act. The revision of assessment for the year 2012-2013 was passed on 31.07.2014. According to the petitioner, there was certain errors which are apparent on the face of the order and therefore, the petitioner filed a petition under Section 84 of the Tamil Nadu Value Added Tax Act on 29.10.2014 for rectification of the mistakes. This rectification petition was not considered and when there was a demand for the tax payable as per the assessment order dated 31.07.2014, the petitioner filed a writ petition in W.P.No.31216 of 2014 challenging the assessment order dated 31.07.2014 and to direct the authority to consider the rectification petition. The said writ petition was disposed of, by order dated 28.11.2014, whereby this Court did not set aside the assessment order, but issued a direction to the 1st respondent to consider the petitioner's application filed under Section 84 of the TNVAT Act. Pursuant to this direction, the respondents issued a notice to the petitioner to appear for a personal hearing and the petitioner appeared before the authority and also filed return submissions on 01.09.2015. Thereafter, the 1st respondent, by order dated 31.12.2015, rejected the petition filed under Section 84 of the Act. In the said rejection order, it was stated that an appeal against the said order lies before the 2nd respondent. Therefore, the petitioner filed an appeal before the 2nd respondent. However, the appeal was time barred and accordingly, the Appellate Authority dismissed the appeal as not entertainable. Further, it is to be pointed out that no appeal is maintainable as against the order rejecting an application for rectification, as held by the Hon'ble Division Bench of this Court in the case of ***State of Tamil Nadu V. The Crompton Engineering Company (Madras) Limited, (1977) 39 STC 260 (Mad).***

3.In the background of these facts, now the petitioner has come before this Court challenging the assessment order and the order rejecting the Section 84 petition, the learned counsel for the petitioner, during the course of argument, submitted that the petitioner may be permitted to file an appeal as against the assessment order dated 31.07.2014 by complying with the pre-deposit condition. Considering the dates and events mentioned above, it is seen that the petitioner has been diligently prosecuting the matter and the writ petition which was filed in W.P.No.31216 of 2014 challenging the assessment order dated 31.07.2014 was within the period of limitation (taking into consideration the condonable period also). That apart, after the order passed by this Court in the earlier writ petition in W.P.No.31216 of 2014 on 28.11.2014, the 1st respondent passed the order rejecting the Section 84 petition after more than one year. Thus, considering the peculiar facts and circumstances of this case, this Court is inclined to permit the petitioner to prefer an appeal.

4.Accordingly, the Writ Petition is disposed of, by giving liberty to the petitioner to file an appeal before the 2nd respondent against the order of assessment dated 31.07.2014 for the year 2012-2013 within a period of 30 days from the date of receipt of a copy of this order. If the appeal is presented within the said time, then, the 2nd respondent shall entertain the appeal without reference to limitation. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

sgl

To
1.The Assistant Commissioner (CT),
Villivakkam Assessment Circle,
5, High Court Colony (South),
Chennai - 600 049.

2.The Appellate Deputy Commissioner (CT)
Chennai (South), PAPJM Building Annex,
No.1, Greams Road, Chennai - 600 006.

+1 CC to Mrs.C.Rekha kumari, Advocate SR.No.40156

CO-SR
ths : 05.08.2016