IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.25433 of 2016
and
W.M.P.No.21759 of 2016

Tvl.Artis Leathers
Represented by its Partner
K.Ahamed Sheik Mohideen
Chunnambu Odai
Erode - 638 005. .. Petitioner

..Vs..

1.The Assistant Commissioner (CT)
Periya Agraharam Circle
Erode

2.The Appellate Deputy Commissioner (CT) (FAC)
C.T. Building
Erode .. Respondents

Prayer
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records on the file of the second respondent in A.P.V.A.T.73/2015 dated 10.05.2016 received on 25.06.2016 and quash the same as being contrary to the principles of natural justice, without jurisdiction and authority of law and further direct the 2nd respondent to pass order on merits and in accordance with law on the appeal memorandum in A.P.V.A.T.73/2015 after grant of enquiry and opportunity.

For Petitioner : Mr.R.Senniappan

For Respondents: Mr.S.Kanmani Annamalai

ORDER

Heard Mr.R.Senniappan, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents and with the consent of either side, the writ petition is taken up for disposal.

2.The petitioner is a dealer in hides and skins and is an assessee on the file of the first respondent herein under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act]. In this writ petition, the petitioner questions the order passed by the second respondent who is the appellate authority, who has rejected the petitioner's appeal petition in A.P.VAT No.73/2015 by order dated 10.05.2016 as not entertainable.

3.The facts which are relevant for the disposal of the writ petition are that the petitioner was issued a revision notice for the year 2012-13 proposing to revise the total and taxable turn over of the petitioner, apart from proposing to reverse the Input Tax Credit and imposing penalty. The petitioner submitted their objections and the Assessing Officer completed the assessment and passed an order on 30.12.2014. Thereafter, the petitioner filed an application on 22.01.2015 requesting for rectification of certain mistakes which have crept in the order of assessment. This petition was presented under Section 84 of the TNVAT Act. Several issues were pointed out in the said petition, which were considered by the Assessing Officer and the Assessing Officer passed an order dated 03.03.2015.

4.The learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents would admit that except for one issue pertaining to invisible loss, all other issues which were brought to the notice of the first respondent in the rectification petition were considered and a decision was taken in favour of the petitioner. Only with regard to the issue pertaining to invisible loss, the petitioner's grievance is that a proper finding was not given by the Assessing Officer. Therefore, the petitioner preferred an appeal to the second respondent by appeal petition dated 23.03.2015. This appeal petition has been rejected as not entertainable by the second respondent/Appellate Authority by the impugned order.

5.On perusal of the impugned order, it is seen that the Appellate Authority, after extracting the grounds of appeal, has devoted more than 4 to 5 paragraphs of the order commenting upon the action initiated by the Assessing Officer in the petition filed by the petitioner under Section 84 of the TNVAT Act. In my view, this was uncalled for, since the appeal is by the dealer and not by the revenue. Therefore, all that the Appellate Authority should have seen in the appeal petition is as to whether the petitioner has made out any grounds to interfere with the rectified assessment order, only with regard to the points which have been held against the petitioner.

6.In other words, what can be seen by the Appellate Authority is with regard to the correctness of the order passed by the Assessing Officer, which is not to the satisfaction of the dealer. This is so because the revenue did not prefer any appeal against the order passed by the Assessing Officer entertaining the petition under Section 84 of the TNVAT Act and rectifying the mistakes in the assessment order dated 30.12.2014. Thus, the exercise adopted by the second respondent was uncalled for.

7.Secondly, it has to be seen as to whether the second respondent was justified in rejecting the appeal as not entertainable. This conclusion of the second respondent is incorrect, since the order passed by the Assessing Officer under Section 84 of the TNVAT Act stood merged with the order of assessment dated 30.12.2014. Thus, in effect, the order of assessment passed against the petitioner is a modified order or rectified order passed pursuant to the exercise of powers under Section 84 of the TNVAT Act.

8.In the light of the said fact, the conclusion arrived at by the Appellate Authority that the appeal is not entertainable is incorrect. I am supported by the decision of the Hon'ble Division Bench of this Court made in the case of State of Tamil Nadu v. Sabarigiri Industries reported in [2013] 58 VST 454 (Mad). Among other issues which were considered by the Hon'ble Division Bench, the first issue which was taken for consideration was regards the maintainability of the appeal. The facts of the said case also was more or less identical to the case on hand and while deciding the question relating to the maintainability, the Hon'ble Division Bench has held as follows:

> "6. As far as the first issue on the maintainability of the appeal is concerned, in the decision reported in 39 STC 260 STATE OF TAMIL NADU v.CROMPTON ENGG. CO., this Court held that there is a clear and a real distinction between an order allowing an application for rectification and thereby rectifying or modifying the original order of assessment and an order rejecting an application for rectification. When the rectification proceedings resulted in a positive action, which has the effect of destroying the finality of original assessment, thereby reopening the assessment order itself, then the provisions relating

to appeal would lie. On the other hand, when the Assessing Officer refuses to interfere with the original order and that order is allowed to remain intact, the said order would not be amenable normally to appeal remedy. In so holding, this Court referred to the provisions under Section 55(4) of the Tamil Nadu General Sales Tax Act, 1959, inserted by Amendment Act No. 31 of 1972, providing for appeal and revision remedy when an order of rectification is made, and not when the authority concerned refuses to pass an order of rectification.

7. Similar view was also taken in the decision of this Court reported in 114 STC 359 STATE OF TAMIL NADU v. SPEEDLINE AGENCIES. This Court, in paragraph 5 of the judgment, pointed out as follows:-

> "Any order made by an authority declining to correct any alleged errors has the effect of leaving the original order intact. It is only when rectification is ordered, and as consequence, one of the parties is aggrieved by such modification, a remedy is required to be provided. For that purpose Section 55(4) of the Act has been introduced. That new sub-section (4) of Section 55 does not confer a right on an applicant who successfully seeks rectification, to file appeal or revision against the order declining to rectify. If the authority which made the original order is of the view that there are in fact no errors in the order which need to be rectified, or can be rectified under Section 55 of the Act, no further proceedings can be taken by applicant, against the refusal of the authority to make an order in favour of the person applying for rectification."

8. In the light of the above stated decisions and in view of Section 55(4) of the Act, the first question is answered against the Revenue. Thus, as against the order of rectification passed resulting in the modification of the original order passed, the assessee has the right of appeal before the appellate forum."

9.In the light of the above discussion and the decision of the Hon'ble Division Bench of this Court, the impugned order calls for interference. Accordingly, the writ petition is allowed and the impugned order is set aside and the appeal petition is restored to the file of the second respondent, who shall hear and decide the appeal on merits and in accordance with law. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

pgp

To

1.The Assistant Commissioner (CT)
Periya Agraharam Circle
Erode

2.The Appellate Deputy Commissioner (CT) (FAC)
C.T. Building
Erode

1 cc to Mr.R.Senniappan, Advocate, sr.46965
1 cc to Special Government Pleader,(Taxes), sr.47047

W.P.No.25433 of 2016
and
W.M.P.No.21759 of 2016

ctk co
kra 08.09.2016