IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 17.8.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.28614 to 28618 of 2016

&

WMP.Nos.24685 to 24689 of 2016

W.P.No.28614 of 2016 :-

Tvl.Sree DRG Vinyls Industries
Rep by its Partner R.G. Chandrasekkar No.
16/2 Kamaraj Road Cross Street
Tirupur 641 604 ... petitioner in all the WPs

Vs

1 The Appellate Deputy Commissioner (CT) C.T.Building
Pollachi 642 001

2 The Assistant Commissioner (CT) Bazaar Assessment Circle
Tirupur 641 601 ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari calling for the records on the files of the 1st respondent in N.Dis. 216/2016/2012-13 213/2016 2009-10, 214/2016/2010-11,215/2016/2011-12, 217/2016, 2013-14 dt 15.7.2016 and connected proceedings of the 2nd respondent in TIN 33262425870/2012-13 33264 25870/2009-10, 2010-2011, 2011-12, 2013-14 dt 5.8.2015 and 1.6.2016 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For petitioner ... Mr.R.Senniappan
For respondents ... Mr.S.Kanmani Annamalai, A.G.P.

COMMON ORDER

Heard Thiru.R.Senniappan, learned counsel for the petitioner and Thiru.S.Kanmani Annamalai, learned counsel for the respondents.

2. With the consent of either side, the Writ Petition itself is taken up for disposal.

3. These Writ Petitions have been filed by the petitioner challenging the "return memo" issued by the first respondent, returning appeal petitions filed by the petitioner against the rectified assessment orders, as being not maintainable. The reason for returning the appeal petition is on the ground that the appeals have been presented after a gap of more than ten months from the date of original order of assessment, i.e. 5.8.2015 and in the rectified order passed by the Assessing Officer dated 1.6.2016, excepting for the tax paid particulars, all other matters are identical to that of the original assessment order.

4. The legal issue to be determined is as to what would be the effect of a rectified order?

5. This issue is no longer res integra and has been decided by the Hon'ble Division Bench of this Court in the case of State of Tamil Nadu vs. Sabarigir Industries, 2013 (58) VST 454 (Madras). In the said case, a some what identical issue arose as to the maintainability of the appeal when an order has been passed by the Assessing Officer either rectifying or refusing to rectify an assessment order. The said matter arose under the provisions of Section 55 of the Tamil Nadu General Sales Tax Act, 1959, which is para materia with Section 84 of the Tamil Nadu VAT Act. While deciding the said question, the Hon'ble Division Bench 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 vs. 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 purposeSection 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.

6. Thus, when a rectification proceeding results 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. One crucial fact which missed the attention of the Assessing officer is with regard to the tax paid by the petitioner. The petitioner

has immediately filed petition for rectification, stating that tax paid should be made note of in the assessment order. Though this application was filed by the petitioner in time, the Assessing Officer passed orders only on 1.6.2016. It is only thereafter, the petitioner could prefer appeal before the Appellate Authority and has preferred the same. However, the appeal has been returned by the Appellate Authority as not maintainable. The reason assigned in the return memo is not sustainable for the simple reason that unless and until the tax paid by the petitioner is recorded in the order of assessment, the petitioner would not be in a position to work out his remedy before the Appellate Authority. Therefore, it is not a minor issue as pointed out by the Appellate Authority.

7. At this juncture, it would be worthwhile to refer to the decision of the Hon'ble Full Bench of this Court in the case of State of Tamil Nadu vs. E.P.Nawab Marakkadai, [1996(100) STC 1].

8. The question which arose for consideration before the Full Bench was whether the appeal petition, which was filed after the passing of the revised order of assessment, could be held to be presented within time, in accordance with the provisions of Section 31 of the Tamil Nadu GST Act and whether remittance made by the petitioner recording the pre-depsoit was valid. The Hon'ble Full Bench has held as follows:-

> "The assessee paid the said amount of Rs.12,638 in two instalments, a sum of Rs.9520 on May 16, 1988 and the balance of Rs.3,118 on June 8, 1988. The Appellate Assistant Commissioner had held that these payments were made with a delay of 25 days and 48 days respectively and therefore, could not have been condoned under the first proviso to Section 31(1) of the Act, being more than 15 days. In our opinion, this approach is totally incorrect because in respect of the assessment order dated February 29, 1988, the appeal had been filed in time along with the admitted tax on April 20, 1988. Since there was a mistake in the order of assessment and consequently some more amounts had to be paid, a revised order was passed on June 7, 1988. Calculated from June 7,1988 the payments on May 16,1988, and June 8,1988 were perfectly within the time even as per section 31(1) of the Act. It cannot, therefore, be said that the admitted tax had been paid after a delay of 25 days or 48 days as assumed by the Appellate Assistant Commissioner. Though the Tribunal had remanded the matters on an incorrect

reasoning, we are confirming the order of remand for the reasons above mentioned and direct the Appellate Assistant Commissioner to pass fresh order on merits and in accordance with law in the light of our observations contained in this judgment.”

9. Thus by applying the legal position as enunciated above, it has to be held that limitation for filing the appeal would commence from the date of receipt of the rectified order i.e. dated 1.6.2016 and if the said date is reckoned, then the appeal petition is still within the period of limitation.

10. Accordingly, the Writ Petitions are partly allowed and the impugned return memos are set aside, leaving it open to the petitioner to raise all the contentions before the Appellate Authority. The petitioner is directed to re-present the appeal along with a copy of this order and the Appellate Authority shall entertain the appeal and deal with the same in accordance with law. There is no order as to costs. Consequently, W.M.P.Nos.24685 to 24689 of 2016 are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Appellate Deputy
Commissioner (CT) C.T.Building
Pollachi 642 001

2 The Assistant Commissioner
(CT) Bazaar Assessment Circle
Tirupur 641 601

+1 cc to Mr.R.Senniappan Advocate sr 46964
+1 cc to the Special Government Pleader taxes sr47051

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