IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2016

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.36223 of 2016
&
WMP No.31153 of 2016

M/s Electro Steel Castings Limited
rep.by Mr.S.Y.Ganapathy
Authorised Signatory ... Petitioner

..Vs..

1. The Appellate Deputy Commissioner (CT)(East)
Greams Road, 3rd floor
Chennai-600 006

2. The Assistant Commissioner (CT)
MYlapore Assessment Circle
Chennai-600 028 ... Respondents

Prayer:
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in N.Dis.600/2016/A1 dated23.08.2016 and quash the same as being invalid and illegal and further directing the first respondent to accept and admit the appeal papers of the petitioner's for consideration on merits.

For Petitioner : Mr.V.Srikanth

For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.V.Srikanth, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondents and with the consent of the learned counsel appearing on either side, the Writ Petition itself is taken up for final disposal.

2.The petitioner is a registered dealer on the file of the second respondent under the provisions of the Tamil Nadu Value Added Tax, 2006 [TNVAT Act] and the Central Sales Tax Act, 1956 [CST Act]. The Appellate Authority returned the petitioner's Appeal Petition dated 12.07.2016, as not entertainable, because the petitioner has filed the same against the rectified order passed by the Assessing Officer/ second respondent dated 03.08.2016.

3.The undisputed facts are that the order of assessment was passed for the assessment year 2014-15 under CST Act dated 31.05.2016. The issue which arose in the Assessment proceedings was whether the petitioner was entitled to concessional rate of tax, in the absence of appropriate Declaration Forms. The petitioner preferred an Appeal to the first respondent on 12.07.2016. The Appeal was filed well within the period of limitation. In the meantime, since certain declaration Forms were received by the petitioner, they presented the same before the Assessing Officer, who rightly accepted those Forms and passed revised order on 03.08.2016. On receiving the revised order, the petitioner remitted the pre-deposit of 25% of the disputed tax as computed in terms of the revised order. Subsequently, along with a covering letter dated 19.08.2016, the petitioner re-presented the Appeal. In the covering letter, the petitioner had clearly stated that in the light of the revised order, the following turnover will be disputed in Appeal :

1) Interstate sales not covered by C forms Rs.4,70,31,198 @3%
2) Stock transfer not covered by form F Rs.27,225/- @ 5%.

Further, the petitioner mentioned that the tax due on the disputed turnover is Rs.14,12,297/- and the petitioner has paid Rs.3,55,000/-, being 25% of the disputed tax and enclosed the challan to prove the same. The petitioner requested that the Appeal may be admitted for consideration on merits. The petitioner also filed a Stay Petition along with the Appeal and prayed for stay of the balance amount of tax.

4.However, the first respondent has returned the Appeal Petition by stating that the petitioner has filed the Appeal Petition as against the rectified order and therefore, not entertainable.

5.This very issue came up for consideration before this Court in the case of ARTIS LEATHERS v. THE ASSISTANT COMMISSIONER (CT) AND ANR [W.P.No.25433 of 2016 dt 17.08.2016]. In the said case also the Appellate Authority refused to entertain the Appeal on the ground that it was passed as against the rectified order under section 84 of the TNVAT Act. While allowing the Writ Petition and directing the Appeal to be taken on file, this Court passed following order:

> "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.
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> 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:
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> > "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."

6.Thus, the proper interpretation that should be given to the case on hand is that the order rectifying the original assessment order should stand merged with the original assessment order dated 31.05.2016 and the Appeal is maintainable against the said revised order on account of merger. Thus, the impugned memo issued by the second respondent is not sustainable in law. The other issue would be as to whether the remittance of 25% of the disputed tax was within the time permissible.

7.Admittedly, on the date of presenting the Appeal on 12.07.2016, 25% of the disputed tax was not paid. However, within a short period, i.e subsequent to the Assessing Officer giving credit the Declaration Forms, revised assessment order was passed and as per the revised order, the petitioner has remitted 25% of the disputed tax. Therefore, for all purposes, the date of remittance of Rs.3,55,000/-, being the 25% of the disputed tax should be taken as the proper pre-deposit for entertaining the Appeal.

8.Accordingly, the Writ Petition is allowed, the impugned order is set aside and the petitioner is directed to re-present appeal before the second respondent within a period of two weeks from the date of receipt of a copy of this order and the second respondent shall take the Appeal on file by reckoning the pre-deposit and decide the Appeal on merits and in accordance with law. It is also open to the first respondent to pass appropriate orders on the stay petition filed by the petitioner.

Since a demand notice has already been issued by the second respondent, demanding the tax as quantified, in the light of the above direction, no coercive action shall be initiated by the second respondent to recover the tax for a period of two weeks, from the date of receipt of a copy of this order,within such time, the petitioner shall re-present the Appeal and move for stay before the first respondent.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rpa

To

1. The Appellate Deputy Commissioner (CT)(East)
   Greams Road , 3rd floor
   Chennai-600 006

2. The Assistant Commissioner (CT)
   MYlapore Assessment Circle
   Chennai-600 028

+1cc to Mr.C.Venkatraman, Advocate, S.R.No.60717 (29.11.2016)
+1cc to the Special Government Pleader(T), S.R.No.61552

W.P.No. 36223 of 2016

ALA(CO)
CA(21/11/2016)