IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.38853 of 2016

P.C.W.Castings Private Ltd.,
rep.by its Director P.Selvam ... Petitioner

Vs

1. The Assistant Commissioner (CT),
Nandambakkam Assessment Circle,
17, Loganathan Nagar, 2nd Street,
Choolaimedu, Chennai-94.

2. The Appellate Deputy Commissioner(CT),
Chennai (East), Greams Road,
Chennai-6. ... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the files of the second respondent herein in N.Dis.599/2016/A1 dated 19.9.2016, and quash the same, while directing the second respondent herein to entertain the appeal filed by the petitioner on 4.1.2016 before the second respondent herein on merits and arising out of the assessment order of the first respondent in CST 839028/2012-13 dated 15.10.2015.

For Petitioner : Mr.N.Prasad

For Respondents : Mr.S.Kanmani Annamalai,
Additional Government Pleader

ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is a public limited company incorporated under the Companies Act, 1956. The assessment for the year 2012-13 was completed by the first respondent and an order was passed

on 22.5.2015. The issue pertains to non submission of C-Forms and disallowance of exemption on the aspect of export sale. On 19.8.2015, the petitioner produced C-Forms, as a result of which, the Assessing Officer - the first respondent herein modified the assessment proceedings by an order dated 15.10.2015. While doing so, the first respondent accepted the C-Forms. However, he declined to revise the assessment on the aspect of export sales.

3. In fact, the order dated 15.10.2015 modifying the assessment order dated 22.5.2015 was passed on an application made by the petitioner under Section 84 of the Tamil Nadu Value Added Tax Act, 2006. As against the portion of the rectified order declining to revise the assessment on the aspect of export sales, the petitioner preferred an appeal under Section 51 of the said Act before the second respondent on 29.12.2015 and paid 25% of the disputed tax and an application for stay was also moved before the second respondent.

4. It is not in dispute that the appeal petition was filed well within the period of limitation of 30 days. However, it appears that there was a marginal shortage of pre-deposit amount, which had been complied with by the petitioner when the appeal petition was returned and thereafter, it was represented. The second respondent, by memo dated 19.9.2016, returned the appeal petition as not entertainable, as it has been filed against the rectified order dated 15.10.2015.

5. The issue would be as to whether the second respondent was justified in refusing to entertain the appeal petition on the sole ground that the petitioner is aggrieved by a rectified order of assessment. This issue was considered by this Court in the earlier writ petition in the case of M/s.Artis Leathers, Erode Vs. Assistant Commissioner, Periya Agraharam Circle [W.P.No.25433 of 2016 dated 17.8.2016]. The facts of the said case are identical to that of the case of the petitioner herein.

6. While considering the legal issue as to whether the Appellate Authority can entertain an appeal against a revised order, in the order dated 17.8.2016, this Court held as follows :

> "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 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 Vs. 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."

7. Thus, the legal issue, which requires consideration in this writ petition, is squarely covered by the aforementioned decision. Therefore, the impugned order calls for interference.

8. Accordingly, the writ petition is allowed, the impugned order is set aside and the petitioner is directed to represent the appeal before the second respondent, within a period of 10 days from the date of receipt of a copy of this order and the second respondent shall entertain the appeal and proceed further in accordance with law. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

RS

To

1. The Assistant Commissioner (CT),
   Nandambakkam Assessment Circle,
   17, Loganathan Nagar, 2nd Street,
   Choolaimedu, Chennai-94.

2. The Appellate Deputy Commissioner(CT),
   Chennai (East), Greams Road,
   Chennai-6.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.63557
+1cc to the Special Government Pleader(T), S.R.No.64075

W.P.No.38853 of 2016

KS(CO)
CA(29/11/2016)