IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.12.2016
CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
W.P.No.39352 of 2016 &
W.M.P.No.33671 of 2016

Annai Dhall Products,
Rep. by its Sole Proprietor Mr.S.Sugileash,
No.10/4, Prakasam Street, Vivekananda Nagar,
Ramapuram, Chennai-89. .. Petitioner

Versus

1.The Appellate Deputy Commissioner (CT),
Chennai (South), Chennai-6.

2.The Assistant Commissioner (CT),
Surappattu Assessment Circle,
27-F, Makkaram Garden,
Kolathur, Chennai-99. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records relating to the first respondent's order made in M.P.No.42/2016/VAT, dated 19.09.2016, to quash the same and to consequently direct the first respondent to restore and decide the appeal on merits and in accordance with law by affording an opportunity to the petitioner.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.L.Chandrakumar, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents. Perused the materials available on record, including the written instructions given by the second respondent to the learned Special Government Pleader.

2. The order impugned in this Writ Petition is an order passed by the first respondent, the appellate authority rejecting the petitioner's appeal petition, as not maintainable. The said appeal was preferred by the petitioner against the order dated 26.08.2016, by which, the error occurred in the

assessment order was rectified by the assessing officer. Challenging the same, the petitioner has preferred an appeal before the first respondent.

3. The respondent would state that the first respondent has rejected the appeal as not maintainable on the ground that as against the revised order, appeal cannot be entertained. This issue was earlier considered by this Court in Tvl.Artis Leathers Vs. The Assistant Commissioner (CT) & others (W.P.No.25433 of 2016, dated 17.08.2016). In the said Writ Petition also, the appeal was rejected as not maintainable on the ground that it was filed against the rectified order. While testing the correctness of the order, it was 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.
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> 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.
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> 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:

> "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."

The above decision would squarely applied to the facts of the case and the appeal filed by the petitioner has to be entertained by the second respondent.

4. In the light of the above discussions and following the discussions of the Hon'ble Division Bench of this Court, referred to supra, the Writ Petition is allowed and the impugned order is set-aside and the petitioner is directed to re-present the appeal petition along with a copy of this order and the first respondent shall entertain the appeal petition and proceed in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
1.The Appellate Deputy Commissioner (CT),
Chennai (South), Chennai-6.

2.The Assistant Commissioner (CT),
Surappattu Assessment Circle,
27-F, Makkaram Garden,
Kolathur, Chennai-99.

+1 cc to Special Government Pleader Taxes sr 71240
+1 cc to Mr.L.Chandrakumar Advocate sr 71234

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