In the High Court of Judicature at Madras

Dated : 23.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.41111 of 2016 & WMP.Nos.35101 & 35102 of 2016

M/s.Velan Agencies, rep.
by its Proprietor P.Velan ...Petitioner

Vs

1.The Commercial Tax Officer,
Chimdambaram II Circle,
Chidambaram.

2.The Appellate Deputy Commissioner
(CT), Cuddalore. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the second respondent herein in his impugned proceedings made in AP.No.130/2013 VAT dated 30.11.2015 and quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mrs.R.Hemalatha
For Respondents : Mr.K.Venkatesh, GA

ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is a dealer and an assessee on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. The order impugned in this writ petition is an order passed by the second respondent, who is the Appellate Authority.

3. The petitioner filed an appeal before the second respondent challenging the order of assessment passed by the first respondent dated 18.10.2013 for the year 2012-13. It is not disputed that the petitioner was effectively represented before the Appellate Authority by their authorized representative and he had argued the matter and that the Appellate Authority, after having heard the authorized representative of the petitioner on the ground raised in the

appeal petition, passed the impugned order. Therefore, the impugned order cannot be faulted with.

4. However, the petitioner's contention is that one important legal ground has not been raised by the petitioner both before the Assessing Officer and before the Appellate Authority.

5. If the petitioner is aggrieved by the order passed by the Appellate Authority, then the petitioner should have filed an appeal before the Tamil Nadu Sales Tax Appellate Tribunal, for which, the limitation period prescribed is 60 days with another 60 days along with an application for condonation of delay. However, the petitioner was not diligent enough and the time has expired and the petitioner cannot now file an appeal before the Tribunal.

6. Faced with this situation, the learned counsel for the petitioner submits that one important contention is being canvassed by the petitioner by placing reliance on Section 41 of the said Act, which deals with forfeiture of the tax collected. The Assessing Officer would be entitled to forfeit the tax. But, while doing so, he should deduct eligible input tax credit claimed, if any, on the corresponding purchases.

7. This submission made by the petitioner being a legal contention, this Court is of the view that an opportunity can be granted to the petitioner to raise the same before the Appellate Authority.

8. Section 84 of the said Act gives power to the Assessing Authority, Appellate Authority, Revisional Authority including the Appellate Tribunal, at any time, within five years from the date of any order passed by it, to rectify any error apparent on the face of the record. It may be true that the petitioner has not raised this ground specifically in the grounds of appeal before the second respondent. Nevertheless, this being a legal contention, this Court is of the view that the petitioner can be granted one opportunity to raise the same before the Appellate Authority by way of an application under Section 84 of the said Act.

9. Accordingly, the writ petition is disposed of by granting liberty to the petitioner to file an application under Section 84 of the said Act before the Appellate Authority in A.P.No.130/13 VAT within a period of 15 days from the date of receipt of a copy of this order. If such application is filed, the second respondent - Appellate Authority shall consider the same on merits and in accordance with law and pass a speaking order. No costs. Consequently, the above WMPs are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
1.The Commercial Tax Officer, Chimdambaram II Circle, Chidambaram.
2.The Appellate Deputy Commissioner (CT), Cuddalore.

+1 cc to Mr.R.Hemalath Advocate sr 68049
+1 cc to Special Government Pleader Taxes
High court Madras sr 68288

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