IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2017

CORAM

THE HON'BLE Mr. JUSTICE K.RAVICHANDRABAABU

W.P.No.10884 of 2017
and
WMP No. 11827 of 2017

Tvl. CPF (INDIA) Private Limited,
Represented by its Asst. Vice President (Accounts)
Mr.Khunakorn Sinchai,
F3, First Floor, No.40,
2nd Street,
Chennai - 600 037. ... Petitioner

Vs.

1. The Appellate Deputy Commissioner (CT) (FAC)
Chennai (South),
3rd Floor, C.T.Building Annexe,
No.1, Greams Road,
Chennai - 600 006.

2. The Commercial Tax Officer,
Dr.JJ Nagar Assessment Circle,
Shop No.38 & 39, Tamil Nadu Slum
Clearance Board Shopping Complex,
Thirumangalam, Anna Nagar,
Chennai 600 040. ... Respondents

This writ petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the first respondent in Rc.220/2017/CST/A1, dated 05.04.2017 and quash the same as arbitrary, illegal and further direct the first respondent to entertain the appeal on file and pass orders on merits.

For Petitioner : Mr.P.R.Kumar

For Respondents : Mr.K.Venkatesh,
Government Advocate

O R D E R

Mr.K.Venkatesh, learned Government Advocate takes notice for the respondents and by consent, the writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved against the order of the 1st respondent dated 05.04.2017 rejecting the appeal filed by the petitioner as not entertainable.

3. It is seen that after an order of assessment was passed, the petitioner filed an application under Section 84 of the Tamil Nadu VAT Act seeking for rectification. It is further seen that an order came to be passed in the said application, whereby the assessment order was modified. Further aggrieved against such order, the petitioner preferred an appeal before the first respondent. Now, the first respondent has rejected the appeal as not entertainable on the reason that as against the order passed under Section 84 of the said Act, no appeal is maintainable.

4. Learned counsel for the petitioner invited this Court's attention to the order passed in W.P.No.39352/2016 dated 01.12.2016 to contend that when the original order of assessment is modified under Section 84 of the said Act, such order is certainly, an appealable one before the Appellate Forum. In the said order, the learned single Judge of this Court has considered the very same issue and observed at paragraph No.8 as follows:

> "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."

5. Therefore, it is evident that the petitioner is entitled to file an appeal against the order passed under Section 84 of the said Act, if such an order modifies the original order of assessment. Therefore, it is seen that the order impugned in this writ petition cannot be sustained and the matter has to go back to the 1st respondent to consider the appeal on merits. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the 1st respondent for considering the appeal on its own

merits and in accordance with law and pass orders after hearing the petitioner. The petitioner is given two weeks time to represent the appeal before the first respondent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

vsi/mm

To

1. The Appellate Deputy Commissioner (CT) (FAC)
Chennai (South),
3rd Floor, C.T.Building Annexe,
No.1, Greams Road,
Chennai - 600 006.

2. The Commercial Tax Officer,
Dr.JJ Nagar Assessment Circle,
Shop No.38 & 39, Tamil Nadu Slum
Clearance Board Shopping Complex,
Thirumangalam, Anna Nagar,
Chennai 600 040.

+1cc to Mr.P.R.Kumar,Advocate sr.25609

+1cc to Special Government Pleader(Taxes)

W.P.Nos.10884 of 2017
and
WMP No. 11827 of 2017

sv(co)
ss(5/5/2017)