IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.5791 of 2017
and
W.M.P.Nos.6195 and 6196 of 2017

Tvl.Sree Srinivasa Power System
represented by its Partner,
Old No.61, New No.103, JPS Complex,
Arcot Road, St.Joseph Complex,
Sathuvachari, Vellore-632 009 ...Petitioner

Vs.

1. The Appellate Deputy Commissiner (CT),
 Vellore.

2. The Assistant Commissioner (CT)(FAC)
 Vellore(Rural), Vellore. ...Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent vide his Return Memo bearing No.N.Dis.236/2017/A1 dated 23.02.2017 and quash the same as being contrary to the principles of natural justice, without jurisdiction and authority of law and further direct the 1st respondent to consider the Appeal memorandum filed by the petitioner challenging the Revised Order of Assessment passed by the 2nd respondent vide his Order of assessment dated 02.12.2016 in TIN 33954324702/2014-15 and pass orders on merits and in accordance with law after grant of enquiry and opportunity.

For Petitioner : Mr.A.Ravichandran
For Respondents : Mr.K.Venkatesh
Government Advocate (Tax)

O R D E R

The petitioner is aggrieved against the Return Memo dated 23.02.2017 issued by the 1st respondent/Appellate Authority returning the appeal filed by the petitioner against the rectification order dated 02.12.2016.

2. Mr.K.Venkatesh, learned Government Advocate takes notice for the respondents. By consent of the parties, the main writ petition itself is taken up for final disposal at the admission stage itself.

3. In pursuant to the order of assessment in respect of the assessment year 2014-15, the petitioner herein filed a rectification application before the assessing authority on 25.01.2016 which was received by the 2nd respondent on 09.11.2016. An order came to be passed in the said application on 02.12.2016. Aggrieved against such order, the petitioner preferred an appeal under Sections 51 and 52 of the Tamil Nadu VAT Act, before the first respondent on 23.01.2017. The first respondent returned the appeal by passing the impugned return memo dated 2302.2017, indicating the following reasons.

> 1. Assessment order passed on 13.09.2016 by disallowing the claim of ITC and thereby raised a demand of Rs.4,05,646.
> 2. Subsequently, a rectification order u/s 84 was passed on 2.12.2016 and the demand was reduced at Rs.1,55,658 same was served on 30.12.2016.
> 3. Appeal application was filed on 17.2.2017 against the rectification order which is incorrect.
> 4. Application filed becomes time barred as it has been filed after lapse of 3 months from the date of receipt of original order.
> 5. Hence your application cannot be admitted.

Challenging the said return memo, the petitioner has approached this Court by filing the present writ petition.

4. Learned counsel appearing for the petitioner submitted that the very return memo issued by the 1st respondent thereby returning the appeal filed by the petitioner in effect, is an order passed in the appeal itself without hearing the petitioner. Therefore, he submitted that it violates the principles of natural justice. Learned Standing Counsel appearing for the respondents submitted that the appeal presented by the petitioner had some defects and therefore, the same was returned as the same could not be admitted, in view of the reason set out in the impugned return memo.

5. Heard both sides.

6. A perusal of the reasons set out in the return memo would undoubtedly indicate that the appeal was not returned for effecting certain compliance and on the other hand, it is an order passed in the appeal itself, as though the appellate authority has arrived at some conclusions including that of the limitation, admittedly, without hearing the petitioner.

7. Needless to say that it is open to the appellate authority to consider all these points, after entertaining the appeal and giving an opportunity of hearing to the petitioner. In this case, it has not been done so. Therefore, I find that the impugned return memo, cannot be sustained, as the conclusions arrived therein, would only indicate as though the appellate authority has decided the appeal itself in respect of certain aspects of the matter. Accordingly, the writ petition is allowed. The impugned return memo is set aside and the matter is remitted back to the 1st respondent for entertaining the appeal, if the same is otherwise in order. On entertaining such appeal, the appellate authority shall consider the same on its own merits and in accordance with law after giving due opportunity of hearing to the petitioner. This Court, once again, reiterates that it has not expressed any view on the merits of the claim made by the petitioner as it is for the petitioner to canvass the same before the appellate authority, namely, the first respondent. The petitioner is given two weeks time to resubmit the returned appeal before the first respondent from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

vsi Sub Assistant Registrar

To

1. The Appellate Deputy Commissiner (cT),
Vellore.

2. The Assistant Commissioner (CT)(FAC)
Vellore(Rural), Vellore.

+1cc to Mr.Ravichandran, Advocate, S.R.No.15113
+1cc to the Government Pleader, S.R.No.15143

NRJ(CO)
RS(22/03/2017)