IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.04.2017

CORAM

THE HONOURABLE MR.JUSTICE RAVICHANDRABAABU

W.P.No.7890 of 2017
and W.M.P.No.8600 of 2017

M/s. G.S.Agencies,
Represented by its Partner, P. Ramesh,
No.51/100, Trichy Branch Road,
Dadagapatti, Salem-636 006. ... Petitioner

vs.

1. The Assistant Commissioner(CT),
   Annathanapatti Assessment Circle,
   Salem.

2. The Appellate Deputy Commissioner (CT) (FAC),
   C.T.Building, Salem.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records on the files of the 2nd respondent in VAT A.P.No.42/2013 dated 31.10.2016 and quash the same as being contrary to the principle laid down by the Honourable Supreme Court of India in the judgment reported in (2008) 16 VST 181 (SC) (Steel Authority of India Limited Vs.Sales Tax Officer, Rourkela-I Circle and others) and further direct the 2nd respondent to pass order afresh by discussing grounds in the appeal memorandum in Form X dated 30.09.2013 filed under Section 51 of the TNVAT Act, 2006

For Petitioner : Mr.R. Senniappan.

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 of the parties, the main writ petition itself is taken up for final disposal as the issue involved in this case lies in a narrow campus.

2. The petitioner is aggrieved against the order of the 2nd respondent/ appellate authority dismissing the appeal filed by the petitioner challenging the order of assessment.

3. The petitioner is an assessee on the file of the 1st respondent. The 1st respondent issued a notice on 15.09.2011 proposing to reject the claim of Input Tax Credit made in the returns for the month of January 2011 to March 2011 and to demand payment of tax due from the petitioner on the ground that the claim of Input Tax Credit on purchase has not been made within 90 days from the date of purchase or before the end of final order as contemplated under Section 19(11) of the Tamil Nadu VAT Act, 2006. The petitioner filed an explanation on 26.09.2011. The objections were rejected by the Assessing Authority, followed by passing an order of assessment dated 30.09.2011. The petitioner filed a writ petition in W.P.No.25302/2011 challenging the validity of Section 19(11) of the said Act. The above writ petition along with other similar writ petitions were taken up for final disposal and by an order dated 17.07.2013, the Division Bench of this Court upheld the validity of Section 19(11) of the said Act. However, liberty was granted to file statutory appeal against the order of assessment within a period of 60 days from the date of receipt of a copy of the order passed by the Division Bench. Accordingly, the petitioner preferred the appeal before the 2nd respondent, who in turn, rejected the appeal by way of the impugned order.

4. Mr.R.Senniappan, learned counsel for the petitioner submitted that the Appellate Authority has not at all applied his mind to the facts and circumstances of the case and dismissed the appeal by a single line order, without there being any discussion of facts and findings given thereon. He further pointed out that when this Court has granted liberty to the petitioner like persons to file statutory appeal before the Appellate Authority and when such appeal was filed, the 2nd respondent cannot reject the same only on the reason that Section 19(11) of the said Act has been upheld by the Division Bench of this Court. He further submitted that when the petitioner has specifically raised in their grounds of appeal

that their claim is not barred by limitation so as to attract Section 19(11) of the said Act, the Appellate Authority ought to have considered that aspect by discussing the relevant facts and circumstances.

5. Mr.K.Venkatesan, learned Government Advocate appearing for the respondents submitted that since this Court has already upheld the validity of Section 19(11) of the said Act, the claim made by the petitioner was rejected by the Assessing Authority and rightly confirmed by the Appellate Authority. However, he is fair enough to accept the position that the Appellate Authority has not discussed any of the facts and circumstances of the petitioner's case, while rejecting the appeal.

6. Heard both sides

7. The petitioner is aggrieved against the order of the Appellate Authority, rejecting the appeal. The said appeal was filed challenging the order of assessment wherein the ITC claim made by the petitioner on the tax paid on local purchasers was rejected on the ground that the same was made beyond the period of 90 days as contemplated under Section 19 (11) of the said Act. A perusal of the order of assessment dated 30.09.2011 would show that the petitioner has specifically raised the objection as though their claim was not made beyond the period of time limit prescribed under Section 19(11) of the said Act. The grounds of appeal raised before the 2nd respondent would also indicate that the petitioner reiterated such contention in detail. No doubt, the validity of Section 19(11) of the said Act was upheld by the Division Bench. But at the same time, the Division Bench has also granted liberty to the individual petitioners to file statutory appeal before the Appellate Authority, challenging the order of assessment. When such being the factual position, the Appellate Authority has to go into the factual aspects of the matter and find out as to whether the claim made by the petitioner is barred by limitation or not. On the other hand, a perusal of the order passed by the Appellate Authority would only indicate that he failed to make such exercise and on the other hand, he has proceeded to decide the appeal as though the validity of Section 19(11) is once again questioned by the petitioner before the Appellate Authority. In fact, the Appellate Authority, except reproducing the some paragraphs of the decision of the Division Bench commencing from paragraph No.38 to paragraph No.86, has not expressed his independent view and finding on the claim made by the petitioner by dealing with the factual aspects of the matter. The Appellate Authority has simply dismissed the appeal by one line order. Therefore, I find that the matter needs to go back to the Appellate Authority for reconsidering the merits and contentions raised by the petitioner and pass a fresh order accordingly.

Thus, the writ petition is allowed and the impugned order of the 2nd respondent is set aside. Consequently, the matter is remitted back to the 2nd respondent to rehear the appeal and pass orders on the same, on merits and in accordance with law, after giving due opportunity of hearing to the petitioner. Such exercise shall be done by the 2nd respondent within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The Assistant Commissioner(CT),
   Annathanapatti Assessment Circle,
   Salem.

2. The Appellate Deputy Commissioner (CT) (FAC),
   C.T.Building, Salem.

+1 CC to Mr. R. Senniappan, sr 20453
+1 Cc to Spl. Govt. Pleader sr 20111

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AD(CO)
sp/13/4