IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.22236 and 22237 of 2017
and
W.M.P.Nos.23269 and 23270 of 2017

BASF India Limited,
rep.by its Executive Administration,
M.Naina Mohamed,
46, Cathedral Road,
Gopalapuram, Chennai-600 086. .. Petitioner in both the W.Ps.

Vs

1.The Assistant Commissioner (CT),
Royapettah Assessment Circle,
Chennai.

2.The Appellate Deputy Commissioner (CT),
Chennai East,
CT Buildings (Annexe), Greams Road,
Chennai-6. .. Respondents in both the W.Ps.

W.P.No.22236 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records on the file of the second respondent herein in AP No.CST 18/2017 dated 31.07.2017 (2013-14) and quash the same and directing the second respondent herein to entertain the appeal and proceed in accordance with law.

W.P.No.22237 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records on the file of the second respondent herein in AP No.CST 19/2017 dated 31.07.2017 (2014-15) and quash the same and directing the second respondent herein to entertain the appeal and proceed in accordance with law.

For Petitioner : Mr.N.Inbarajan

For Respondents : Mr.S.Kanmani Annamalai,
Additional Government Pleader

ORDER

Heard Mr.N.Inbarajan, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents.

2.The petitioner is before this Court aggrieved by the orders passed by the second respondent dismissing the appeals filed by the petitioner in AP Nos.CST 18/2017 and CST/19/2017, on the ground that the appeals are not maintainable.

3.The first contention raised by the learned counsel for the petitioner is that when the stay petition was listed for hearing before the appellate authority and when the petitioner was of the view that the appellate authority will consider the stay petition, they were shocked to receive the impugned orders rejecting the appeals. The second contention is that the observation made by the second respondent in the impugned orders that no appeal lies against the order passed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 is not tenable. In support of the said contention, the learned counsel for the petitioner placed reliance upon the decision of this Court in P.C.W.Castings Private Ltd. vs. The Assistant Commissioner (CT), Nandambakkam Assessment Circle, Chennai and another in W.P.No.38853 of 2016 dated 08.11.2016.

4.The learned Additional Government Pleader appearing for the respondents submitted that if the petitioner is aggrieved by the impugned orders, he should pursue the other remedies available under the TNVAT Act and the writ petitions are not maintainable. Further it is submitted that the assessing officer has passed the revised orders on 16.03.2017 and 20.03.2017 giving due credit to the Form-C declarations produced by the petitioner and the petitioner has not challenged the original assessment orders before the appellate authority and they filed the appeals only as against the revised orders dated 16.03.2017 and 20.03.2017.

5.The legal issue to be considered in these cases is whether the reason assigned by the second respondent for rejecting the appeals is proper. Similar issue was tested by this Court in the case of P.C.W.Castings Private Ltd. vs. The Assistant Commissioner (CT), Nandambakkam Assessment Circle, Chennai and another in W.P.No.38853 of 2016 dated 08.11.2016. In the said case also, the appeal was presented against a rectified order of assessment. This Court, after taking into consideration the earlier order passed in the case of M/s.Artis Leathers, Erode Vs. Assistant Commissioner, Periya Agraharam Circle in W.P.No.25433 of 2016 dated 17.08.2016, set aside the impugned order thereon and directed the authority to hear the appeal on merits and in accordance with law.

6.At this juncture, it would be useful to refer to the operative portion of the order in P.C.W.Castings Private Ltd. vs. The Assistant Commissioner (CT), Nandambakkam Assessment Circle, Chennai and another (supra), which reads thus:

> “5.The issue would be as to whether the second respondent was justified in refusing to entertain the appeal petition on the sole ground that the petitioner is aggrieved by a rectified order of assessment. This issue was considered by this Court in the earlier writ petition in the case of M/s.Artis Leathers, Erode Vs. Assistant Commissioner, Periya Agraharam Circle [W.P.No.25433 of 2016 dated 17.8.2016]. The facts of the said case are identical to that of the case of the petitioner herein.
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> 6.While considering the legal issue as to whether the Appellate Authority can entertain an appeal against a revised order, in the order dated 17.8.2016, this Court held as follows :
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> > "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.
> >
> > 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.

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 Vs. 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 Vs. 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."

7.Thus, the legal issue, which requires consideration in this writ petition, is squarely covered by the aforementioned decision. Therefore, the impugned order calls for interference.

8.Accordingly, the writ petition is allowed, the impugned order is set aside and the petitioner is directed to represent the appeal before the second respondent, within a period of 10 days from the date of receipt of a copy of this order and the second respondent shall entertain the appeal and proceed further in accordance with law. No costs."

7.If the above legal principle is applied to the case on hand, the only conclusion that could be arrived at is to hold that the impugned orders rejecting the petitioner's appeals are not sustainable. Thus for the above reasons, the writ petitions are allowed and the impugned orders are set aside and the second respondent is directed to take on file the appeal petitions, hear the parties and decide the matter on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner. It is needless to state that before hearing the appeals, the second respondent shall hear the petitioner's stay petitions at the first instance. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To
1.The Assistant Commissioner (CT),
Royapettah Assessment Circle,
Chennai.
2.The Appellate Deputy Commissioner (CT),
Chennai East,
CT Buildings (Annexe), Greams Road,
Chennai-6.
+ 1 cc to Mr. M. Inbarajan, Advocate SR.61353
+ 1 cc to Government Pleader Sr.61340

W.P.Nos.22236 and 22237 of 2017 and W.M.P.Nos.23269 and 23270 of 2017

KS(CO)
EU(20/09/2017)