IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.05.2017

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THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.12789 of 2017
and
WMP Nos.13644 and 13645 of 2017

M/s.J.K.Lungie Handloom (P) Ltd
rep. by its Director,
Jugal Kishore Ladha ... Petitioner

Vs

1.The Commercial Tax Officer,
Nethaji Road Circle,
Erode,
Erode District.

2.The Appellate Deputy Commissioner (CT)
Erode,
Erode District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus to call for the records on the file of the second respondent in its impugned proceedings in A.P.No.VAT.172/15 dated 30.01.2017, quash the same and further direct the second respondent to entertain the appeal filed by the petitioner in terms of Section 51 of the Act as against the proceedings of the first respondent in TIN.33662884072/2012-13 dated 16.09.2015 and dispose of the same in accordance with law.

For Petitioner :Mrs.R.Hemalatha

For Respondents :Mr.S.Kanmani Annamalai, AGP (T)

ORDER

The petitioner has filed this writ petition to quash the order of the second respondent dated 30.01.2017 in A.P.No.VAT.172/15 and consequently to direct the second respondent to entertain the appeal filed under Section 51 of the TNVAT Act, by the petitioner as against the assessment order of the first respondent dated 16.09.2015.

2.The facts of the case as averred in the petition are as follows: The petitioner is a dealer in cloth at Erode and is an assessee on the file of the first respondent. For the assessment year 2012-13, they filed their returns in Form I under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter shortly referred to as TNVAT Act) reporting total and taxable turnover as Rs.28,12,77,570/- and nil respectively. After verification, the first respondent issued a notice dated 21.07.2015, calling upon the petitioner to pay tax at 5% under Section 13 of the TNVAT Act, in addition to penalty under Section 22(5) of the Act. To the said notice, the petitioner duly filed their objection by way of letter dated 17.08.2015. Not satisfying the same, the first respondent passed an assessment order dated 16.09.2015, against which, the petitioner filed an appeal before the second respondent. However, the second respondent by order dated 30.01.2017, returned the appeal filed by the petitioner, with a direction to file a revision petition under Section 54 of the Act before the Revisional Authority. Aggrieved over the same, the petitioner is before this Court with the present writ petition for the above stated relief.

3.Mrs.R.Hemalatha, learned counsel for the petitioner submitted that though the petitioner has filed the appeal as against the assessment order passed under Section 22(4) of the TNVAT Act by the first respondent for the year 2012-13, well within the period of limitation, the second respondent has returned the same with a direction to the petitioner to approach the revisional authority, by the impugned order dated 30.01.2017, which is illegal and against the provisions of law.

4.Mr.Kanmani Annamalai, learned Additional Government Pleader (T), who took notice for the respondents, submitted that it is an order passed under Section 13 of the Act and hence, a revision alone will lie.

5.Heard both sides and perused the records.

6.The respondent in the impugned order, while levying tax for job work related to processing and printing charges under Section 13 as well as on Packing material purchase under Section 12 of the Act, ultimately rejected the returns partially and assessed the tax under Section 22(4) of the TNVAT Act. Such an order is necessarily to be challenged under Section 51 of the TNVAT Act before the Appellate Deputy Commissioner. For better appreciation, it is useful to refer Section 51 of the TNVAT Act, which reads as follows:

> "51.Appeal to Appellate Deputy Commissioner:
> (1)Any person objecting to an order passed by the appropriate authority under Section 22, Section

> 24, Section 26, sub sections (1), (2), (3) and (4) of Section 27, Section 28, Section 29, Section 34, sub-section (2) of Section 40 other than an order passed by an (Deputy) Commissioner (Assessment) may, within a period of thirty days from the date on which the order was served on him, in the manner prescribed, appeal to the Appellate (Deputy) Commissioner having jurisdiction: ...”

7.Under such circumstances, considering the facts and circumstances of the case and also taking note of the submissions made on either side, this Court is inclined to set aside the order impugned herein. Accordingly, the writ petition is allowed and the impugned order dated 30.01.2017 passed by the second respondent is set aside. Consequently, the second respondent -Appellate Authority is directed to take up the appeal filed by the petitioner as against the assessment order dated 16.09.2015, on file, if it is otherwise in order, within a period of two weeks from the date of receipt of a copy of this order and dispose of the same on merits and in accordance with law, after granting due opportunity of personal hearing to the petitioner, within a period of twelve weeks thereafter. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Commercial Tax Officer,
Nethaji Road Circle,
Erode,
Erode District.

2.The Appellate Deputy Commissioner (CT)
Erode,
Erode District.

+1cc to the Special Government Pleader Sr.37670
+1cc to Mrs.R.Hemalatha, Advocate Sr.37630

W.P.No.12789 of 2017

lrs[co]
srg 07/06/2017