IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP No.28943 of 2017
and
WMP.Nos.31169 & 31170 of 2017

M/s. Rajeswari Agency,
Rep.by its Proprietor-C.A.Arunkumar,
No. 846 & 848, Gandhi Road,
Arni, Tiruvannamalai District. ... Petitioner

Vs.

1. The Commercial Tax Officer,
Arni, Tiruvannamalai District.

2. The Appellate Deputy Commissioner (CT),
Commercial Taxes Building,
Vellore, Vellore District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a of Writ of Certiorarified Mandamus calling for the records on the file of the 2nd respondent in its impugned proceedings made in Appeal No. & Year:177/2015 (VAT) dated 26.07.2017 quash the same and further direct the 2nd respondent herein to pass order afresh in accordance with law by entertaining the appeal filed by the petitioner as against the order passed by the 1st respondent in TIN:33354562779/2013-14 dated 27.02.2015.

For Petitioner : Mrs.R.Hemalatha

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

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O R D E R

Heard Mrs.R.Hemalatha, learned counsel appearing on behalf of the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents. With consent on either side, this writ petition is taken up for final disposal.

2.The petitioner is aggrieved by an order passed by the second respondent/the Appellate Deputy Commissioner(CT), Vellore, rejecting the petitioner's appeal petition on the ground that the appeal is not maintainable. Unfortunately, the said appellate authority did not notice that in terms of Section 51 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred as "the TNVAT Act"), an appeal is maintainable against the order under Section 40(2) of the TNVAT Act. It is rather surprising as to how an officer in the cadre of Deputy Commissioner has lost sight of the statutory provision and held that no appeal is maintainable. The statute is very clear and the Appellate Deputy Commissioner is entitled to examine the correctness of an order passed under Section 40(2) of the TNVAT Act, especially, when the order has been passed by the officer in the cadre of Commercial Tax Officer. Thus, the impugned order is palpably, illegal and outcome of total non application of mind.

4. For the above reasons, the writ petition is allowed, the impugned order is setaside and the second respondent/Appellate authority is directed to take on file the appeal and proceed in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bsm/abr

To

1. The Commercial Tax Officer,
Arni, Tiruvannamalai District.

2. The Appellate Deputy Commissioner (CT),
Commercial Taxes Building,
Vellore, Vellore District.

+1cc to Mr. Advocate, S.R.No. 80730/17
+1cc to the Special Government Pleader, S.R.No. 80433

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TR(29/11/2017)