IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.29285 of 2018
and
WMP Nos.34222 and 34224 of 2018

Sri Murugan Tractors,
Rep. by its Proprietor D.Manikandan,
3/47, Mahabalipuram Road,
Kothimangalam,
Thirukazhukundram. ... Petitioner

vs.

1.The Commissioner of Commercial Tax,
Ezhilagam, Chepauk,
Chennai 600 005.

2.The Assistant Commissioner (ST),
Thirukazhukundram,
Kanchipuram District.

3.The Deputy State Tax Officer,
Thirukazhukundram,
Kanchipuram District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari to call for records pertaining to proceedings in TIN 33526363733/2015-16 dated 15.10.2018 passed by the third respondent and consequently the orders in TIN 33526363733/2015-16 dated 02.07.2018 and 19.02.2018 passed by the third respondent, quash the same.

For Petitioner : Mr.R.Subramanian

For Respondents : Mrs.G.Dhana Madhri
Government Advocate (T)

ORDER

The petitioner is aggrieved against the proceedings of the third respondent dated 15.10.2018.

2. Heard both sides.

3. The petitioner suffered an order of assessment dated 19.02.2018 at the hands of the third respondent, wherein and whereby the Assessing Authority imposed tax and penalty on the petitioner. The petitioner filed a petition under Section 84 of the TNVAT Act, 2006 before the third respondent on 24.04.2018, challenging the said order of assessment. The third respondent by order dated 02.07.2018, rejected the application filed under Section 84, as not entertainable. Hence, the petitioner preferred an appeal under Section 51 of the TNVAT Act on 15.09.2018. However, the same was presented before the Assistant Commissioner- Sales Tax, Thirukazhukundram, who is not the actual appellate authority. On the other hand, when the petitioner has got remedy of revision under Section 54 of the TNVAT Act, he has wrongly chosen to file appeal under Section 51 of the TNVAT Act, 2006, that too before the wrong forum. While so, the appeal papers preferred by the petitioner before the Assistant Commissioner was referred to the third respondent once again, who in turn considered the same once again as an application under Section 84 of the Act and rejected the same by the impugned order dated 15.10.2018.

4. The only grievance of the petitioner before this Court is that even though the petitioner has filed appeal before the wrong officer, the same should have been forwarded to the Appellate Authority for deciding the same on merits. Therefore, it is contended that the Assistant Commissioner has erred in forwarding the papers to the third respondent and considered the same once again as an application under Section 84.

5. Learned counsel for the petitioner reiterated the above contentions.

6. On the other hand, the learned Government Advocate appearing for the respondent submitted that the petitioner has got remedy of revision under Section 54 of the TNVAT Act, 2006 but the petitioner has wrongly filed appeal under Section 51 of the TNVAT Act,2006.

7. It is seen that the petitioner has wrongly chosen to file an appeal as against the order passed by the third respondent already under Section 84 of TNVAT Act, 2006 dated 02.07.2018 instead of filing revision before the concerned Revisional Authority. Therefore, this writ petition is disposed of, by granting liberty to the petitioner to file a revision against the order dated 02.07.2018 as well as the present order dated 15.10.2018 before the concerned Revisional Authority within a period of two weeks from the date of receipt of a copy of this order. If any such revision is filed, the concerned

Revisional Authority shall consider the same and pass orders on its own merits and without reference to the period of limitation. It is further made clear that this Court is not expressing any view on the merits of the contention of either side on the orders of assessment or on orders passed on the rectification. No costs. The connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vri

To

1.The Commissioner of Commercial Tax,
Ezhilagam, Chepauk,
Chennai 600 005.

2.The Assistant Commissioner (ST),
Thirukazhukundram,
Kanchipuram District.

3.The Deputy State Tax Officer,
Thirukazhukundram,
Kanchipuram District.

+1 cc to M/s.R.Subramanian, Advocate SR.No.83293
+1 cc to The Special Government Pleader, Sr.No.83682

W.P.No.29285 of 2018

CSL/10.12.2018