IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.03.2019

Coram

The Honourable DR.JUSTICE ANITA SUMANTH

WP. No.32701 of 2018
& W.M.P.No.37900 of 2018

Tvl.Tap Engineering
Represented by its Proprietor
P.Elangovan ... Petitioner

--Vs--

1.The Assistat Commissioner(CT)
Koyambedu Assessment Circle,
Chennai-107
2.The Assistant Commissioner (CT),
Pattaravakkam Assessment Circle,
127, 2nd Floor, Yadhaval Street,
Padi, Chennai-50
3.The Appellate Deputy Commissioner (CT),
Chennai (South), C.T.Building
Chennai-6 ... Respondents

P R A Y E R: WRIT PETITION under Article 226 of the Constitution in the nature of Certiorarified Mandamus calling for the records on the files of the 2nd respondent in CST/719689/2006-07 dated 02.08.2018 and connected proceeding of the 3rd respondent in AP No.78/2014/CST (Old AP No.APC 56/2013) dated 14.09.2015 and quash the same as being contrary to the principles laid down by this Court in the judgment reported in (2013) 58 VST 454 (The State of Tamil Nadu Vs.Sabarigiri Industries) and further direct the 3rd respondent to restore the appeal in AP No.78/2014/CST (Old AP No.APC 56/2013) for passing of order on merits and in accordance with law after grant of enquiry and opportunity.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.V.Haribabu
Additional Government Pleader

O R D E R

Heard Mr.R.Senniappan, learned counsel for the petitioner and Mr.V.Haribabu, Additional Government Pleader for the respondents. By consent expressed, this Writ Petition is disposed of finally at the stage of adjourned admission.

2. Written instructions from the respondents, dated 06.02.2019 have been filed and are taken into account while passing this final order.

3. The petitioner is a dealer in pump and pump spares. In respect of the period 2006-07, the petitioner was originally assessed to Central Sales Tax Act on 13.11.2011. The order was revised on 25.07.2013. Thus according to the petitioner, upon revision, the original order stands merged with the subsequent order of revision. Any appeal, if at all could challenge, only order dated 25.07.2013. The petitioner filed an appeal challenging the revision order dated 25.07.2013 which has been returned on 14.09.2015 by the Appellate Deputy Commissioner (CT) , R3 in the Writ Petition, on the ground that the appeal filed is not maintainable. Consequent thereupon a notice dated 02.08.2018 calls upon the petitioner to remit the entire disputed demand arising out of the assessment proceedings under threat of coercive action.

4. The petitioner challenges the order of R3 dated 14.09.2015 and the consequent demand notice dated 02.08.2018 as being contrary to the provisions of the Act and the rationale of the decision of this Court in the case of State of Tamil Nadu V. Sabarigiri Industries (58 VST 454). It also seeks a direction to the third respondent to restore its appeal for adjudication on merits.

5. Per contra, the respondents, rely upon the decision of this Court in Sumangala Steels Limited V. Tamil Nadu Taxation Special Tribunal (137 STC 517) and State of Tamil Nadu vs. Speedline Agencies [(1990) 114 STC 359 Mad]. .

6. The legal issue thus arising for consideration is whether the provisions of section 52 of the Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act') would extend to cover an order of revision passed under section 84 of the TNVAT Act.

7. In Speedline Agencies (supra), this Court at paragraph 5 states 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 case of Sabarigiri Industries (supra) the Division Bench of this Court, in paragraph 6 of the judgment states 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 v.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.

9. In the above cases, Division Benches of this Court have considered the maintainability of an appeal in a situation where an order of rectification modifies the original assessment holding that where the rectification proceedings destroy the finality of an original assessment thereby reopening the assessment order, the provisions relating to appeal would be available. On the contrary, when the petition for revision is dismissed, the order of assessment remains untouched and in such circumstances, the order of revision is not amenable to appeal.

10. In the present case, the order of rectification dated 25.07.2013 modifies the order of assessment dated 30.11.2011. The original assessment had accepted the turnover reported in the monthly returns, whereas in revision, the authority accepts the 'C' and 'E1' declaration forms after verification, declining to accept the export documents filed at the time of revision. It is thus clear that the original assessment was revised and the rationale of the decisions of this Court in the cases of

Speedline Agencies (supra) and Sabarigiri Industries (supra) apply on all fours.

11. In the light of the discussion above, the impugned order is set aside. The third respondent will take the appeal in AP No.78/2014/CST (Old AP No.APC 56/2013) on its rolls, list the same for hearing and pass orders after hearing the petitioner, in accordance with law, as expeditiously as possible and in any event within a period of six (6) weeks from the date of receipt of a copy of this order.

12. The Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ska/sl

To

1.The Assistat Commissioner(CT)
Koyambedu Assessment Circle,
Chennai-107

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Pattaravakkam Assessment Circle,
127, 2nd Floor, Yadhaval Street,
Padi, Chennai-50

3.The Appellate Deputy Commissioner (CT),
Chennai (South), C.T.Building
Chennai-6

+1 cc to Mr.R.Senniappan, Advocate, Sr.No. 29028
+1 cc to The Government Pleader, Sr.No. 28950

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CSL/03.06.2019