

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON : 22.03.2019
DELIVERED ON : 05.04.2019

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CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.[MD]No.6807 of 2019
and
W.M.P.[MD]No.5445 of 2019

M/s. Sonas Essence Mart,
No.7-B, Allimal Street,
Trichy - 620 008.
Rep. By its Proprietor.

: Petitioner

Vs.

1.The Appellate Deputy Commissioner (CT) (FAC),
Trichy - 620 020.

2.The Assistant Commissioner (CT),
Rock Fort Assessment Circle,
Trichy - 620 020.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent leading to passing of order vide AP No.47/2018 dated 03.04.2018 and quash the same insofar as the claim of ITC based on purchases from cancelled dealers and direct the first respondent to pass order based on the judgments of this Court and after considering the documents and submissions made by petitioner.

For Petitioner : MrS.Sathiyanarayanan

For Respondents : Mr.N.Shanmugaselvam
Additional Government Pleader

O R D E R

The instant writ petition has been filed challenging the order dated 03.04.2018 passed in A.P.No.47 of 2018, by the first respondent.

2.Brief facts leading to the filing of this Writ Petition are as follows:

2.1.It is the case of the petitioner that he is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 [hereinafter referred to as 'TNVAT Act']. According to him, the enforcement wing officials on 16.02.2017 and 20.02.2017 conducted a surprise inspection at the business place of the petitioner. During the



course of inspection, the officials verified accounts for the years 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16.

2.2. According to the petitioner, subsequent to the surprise inspection, the petitioner received a revision notice dated 24.07.2017 proposing to revise the assessment for the assessment year 2015-2016 and the second respondent included under the said proposal for reversing the ITC for purchases made by the petitioner from dealers whose TIN were cancelled. According to the petitioner, objecting the revision notice, the petitioner sent a detailed reply dated 01.11.2017 and requested the respondent to drop the revision proposal stated in the revision notice. It is the case of the petitioner that without due consideration to the documents and submission made by the petitioner, the second respondent passed the assessment order dated 27.12.2017 confirming its proposal for revision of assessment.

2.3. Aggrieved by the said revised assessment order dated 27.12.2017 passed by the second respondent, the petitioner filed its appeal before the first respondent which was numbered as A.P. No.VAT 47/2018. The first respondent has partly allowed the appeal and disallowed the ITC claim made by the petitioner on cancelled dealers through its order dated 03.04.2018. It is the case of the petitioner that he produced all invoices and other documents required under Section 19 of the TNVAT Act, to claim ITC before the respondents to substantiate its claim during the course of the proceedings. According to the petitioner, the second respondent has passed the giving effect order dated 02.07.2018.

2.4. It is the case of the petitioner that the first respondent without applying his mind and without giving due consideration to the circular of the Commissioner of Commercial Taxes, VAT cell / 39009 / 2017 (VCC No.1060) dated 29.08.2007 has passed the order dated 03.04.2018. Aggrieved by the order dated 03.04.2018, the petitioner has filed this writ petition.

3. Heard Mr.S.Sathiyarayanan, learned Counsel for the petitioner and Mr.N.Shanmugaselvam, learned Additional Government Pleader for the respondents.

4. Admittedly, there is an appeal remedy available to the petitioner as against the order dated 03.04.2018 passed by the first respondent in A.P.No.47 of 2018. But instead of filing an appeal on the ground that the impugned order insofar as the allowance of the claim of ITC by the petitioner based on purchases from cancelled dealers is passed by the first respondent, with *malafide* intention and with blatant violations of the principles of natural justice and established position of law. Further more, the petitioner has filed this writ petition on the ground that the first respondent has passed the impugned order mechanically and without application of mind and he has also not considered the circular of the Commissioner of Commercial Taxes, VAT cell/39009/2017 dated 29.08.2007.



5. This Court now needs to examine as to whether the ground raised by the petitioner amounts to violation of the principles of natural justice and whether the first respondent has passed the impugned order mechanically or by total non-application of mind. The first respondent under the impugned order dated 03.04.2018 has framed the following points for consideration while deciding the appeal.

"1) Whether the levy of tax on the receipt of commission to the tune of Rs.9,58,317/- at 5% p.a. is correct or not?

2) Whether the reversal of ITC for the purchase made from RC cancelled dealer is correct or not?

3) Whether the penalty of Rs.1,06,565/- levied by the assessing officer under Section 27(4) of the TNVAT Act is correct or not?"

6. Under the impugned order dated 03.04.2018, the first respondent has given his finding on each and every point of consideration framed by him. The first respondent under the impugned order dated 03.04.2018 has partly allowed the appeal and has answered Point No.1 in favour of the petitioner, Point No.2 & 3 against the petitioner upholding the reversal of input ITC by the assessing officer along with the consequent payment of penalty as the petitioner did not produce documentary evidence to prove that the registration certificate of the selling dealers were cancelled.

7. It is the case of the petitioner that excepting for this one line cryptic order, wherein the first respondent has stated that no documentary evidence was produced in respect of the selling dealers whose registration certificates were cancelled, no proper reason has been given by the first respondent under the impugned order. Admittedly, the petitioner has been given opportunity by the first respondent to raise all grounds available to him under law to attack the assessment order dated 27.12.2017, which is the subject matter of the appeal. The only point raised by the petitioner in this writ petition is that the first respondent has passed a cryptic order which amounts to a non-speaking one and further, the first respondent has also without application of mind to the internal circulation of the Commercial Tax Department has violated the principles of natural justice.

8. This Court has perused and examined the impugned order of the first respondent dated 03.04.2018, wherein the first respondent has partly allowed the appeal filed by the petitioner under Section 51 of the TNVAT Act, 2006. Unless and until there is violation of principles of natural justice or the order has been passed without jurisdiction, this Court under Article 226 of the Constitution of India cannot pass orders before the petitioner exercising alternate, efficacious appellate statutory remedy available to him under law. The order has been passed by the first respondent under the TNVAT



Act. There is a statutory appellate remedy available to the petitioner before the Tamil Nadu Sales Tax Appellate Tribunal, Madurai, under Section 58 of the TNVAT Act, 2006. Section 58 of the TNVAT Act, reads as follows:

"Section 58. Appeal to Appellate Tribunal.-

(1) Any officer prescribed by the Government or any person objecting to an order passed by the [Appellate Deputy Commissioner] under sub-section (3) of section 51, or by the [Appellate Joint Commissioner] under sub-section (3) of section 52, or by the [Joint Commissioner] under sub-section (1) of section 53, may,-

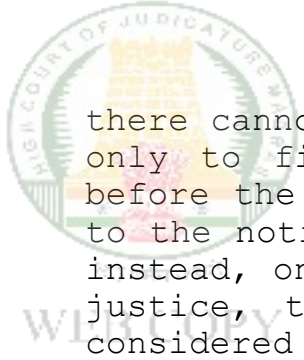
a) within a period of one hundred and twenty days, in the case of an officer so prescribed by Government.

b) within a period of sixty days, in the case of any other persons, from the date on which the order was served, appeal against such order to the Appellate Tribunal:

Provided that the Appellate Tribunal may, within a further period of one hundred and twenty days in the case of an officer prescribed by Government and sixty days in the case of any other person, admit an appeal presented after the expiration of the first mentioned period of one hundred and twenty days or sixty days, as the case may be, if it is satisfied that the appellant had sufficient cause for not presenting the appeal within the first mentioned period."

9. Instead of filing an appeal as provided under Section 58 of the Act, the petitioner has approached this Court under Article 226 of the Constitution of India. The first respondent under the impugned order while considering whether the assessing officer was correct in reversing the ITC on the purchases effected by the petitioner from cancelled dealers has observed that the petitioner did not produce documentary evidence to prove that the registration certificate of the selling dealers were cancelled merely with retrospective effect and only due to the said reason, the first respondent had confirmed the assessment order passed by the second respondent. In fact, only after considering the assessment order passed by the second respondent, the first respondent has partly allowed the appeal in respect of Point No.1 namely whether the levy of tax on receipt of commission to the tune of Rs.9,58,317/- at 5% p.a., is correct or not and in respect of that point, the first respondent has passed an order in favour of the petitioner.

10. Therefore, from the above it is clear that the first respondent has not considered the impugned assessment order and only thereafter has passed the impugned order dated 03.04.2018. If at all, the petitioner is aggrieved by the same and his contention that



there cannot be any reversal of input tax credit, his only remedy is only to file an appeal under Section 58 of the TNVAT Act, 2006 before the sales tax appellate tribunal. This fact was also brought to the notice of the petitioner even under the impugned order. But instead, on the alleged ground of violation of principles of natural justice, the petitioner has approached this Court which, in the considered view of this Court, is a wrong forum to redress the grievance of the petitioner. Further, the writ petition has been filed on 19.03.2019, whereas the impugned order of the first respondent was passed on 03.04.2018.

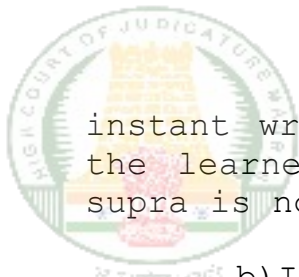
11. Under Section 58 (1) (b) of the TNVAT Act, 2006, an appeal against the impugned order dated 03.04.2018 passed by the first respondent will have to be filed within a period of 60 days before the Sales Tax Appellate Tribunal and the proviso to the said Section enables the Sales Tax Appellate Tribunal to entertain an appeal within a further period of 60 days if it is satisfied that the petitioner had sufficient cause for not pressing the appeal within a period of 60 days. Section 58(1)(b) of the TNVAT Act, 2006 reads as follows:

"58(1) (b) within a period of sixty days, in the case of any other persons, from the date on which the order was served, appeal against such order to the Appellate Tribunal:

Provided that the Appellate Tribunal may, within a further period of one hundred and twenty days in the case of an officer prescribed by Government and sixty days in the case of any other person, admit an appeal presented after the expiration of the first mentioned period of one hundred and twenty days or sixty days, as the case may be, if it is satisfied that the appellant had sufficient cause for not presenting the appeal within the first mentioned period."

12. The learned Counsel for the petitioner had referred to the following judgments for the proposition that the dealer should be given an opportunity to file an appeal even if the appeal is beyond the prescribed period as stipulated under the Tamil Nadu Value Added Tax Act, 2006.

a) ***Sujatha Jewellery Vs. Commercial Tax Officer, Kumbakonam and another*** reported in ***(2014) 71 VST 326 (Mad)***, for the proposition that quasi judicial order must be supported by reasons and the said rule is one of the basic principles of natural justice. Insofar as this judgment passed by the learned Single Judge of this Court is concerned, that is an appeal to be filed against an assessment order passed under Section 27(3) and 27(4) of the TNVAT Act, 2006. Whereas in the case on hand, it has crossed that stage and the appellate authority under Section 51 of the TNVAT Act, has considered the assessment order and has passed final orders by virtue of the impugned order. On the ground of principles of natural justice and on the ground of non-application of mind, the



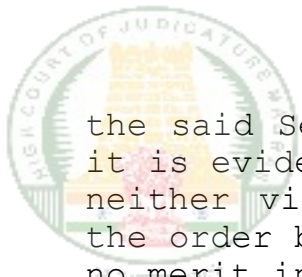
instant writ petition has been filed. Therefore, the judgment of the learned Single Judge in the case of **Sujatha Jewellery**, cited supra is not applicable to the facts of the instant case.

b) Insofar as the judgment in the case of **The Siemens Engineering and Manufacturing Co. of India Ltd., Vs. the Union of India and another** reported in **AIR 1976 Supreme Court 1785**, relied upon by the learned Counsel for the petitioner is concerned, the same is also not applicable to the facts of the instant case as the first respondent under the impugned order dated 03.04.2018 has given reasoning that the petitioner has not produced any documentary evidence to prove that the registration certificate of the selling dealers were cancelled merely with retrospective effect.

13. Further, under the impugned order dated 03.04.2018, the first respondent has applied his mind and has in fact partly allowed the appeal by partly granting the relief to the petitioner by allowing the petitioner's appeal insofar as the levy of tax on the receipt of commission and has held that the petitioner is liable to pay tax only at 5%. If not for the fact that the first respondent has considered the assessment order, the first respondent would not have partly allowed the appeal filed by the petitioner. Further more, the writ petition has been filed beyond the period prescribed under Section 58(1)(b) of the TNVAT Act. If really the petitioner was a diligent party, he would have filed the writ petition immediately after the receipt of the order dated 03.04.2018 passed by the first respondent but instead has filed the writ petition only on 19.03.2019.

14. The Tamil Nadu Sales Tax Appellate Tribunal under the proviso to Section 58(1)(b) of the Act, 2006, has got the powers to condone delay of filing an appeal only for a period of 60 days. It is settled law that when there is special law, the special law will over ride the general law. In the instant case, the petitioner has approached this Court without filing an appeal under Section 58 (1) before the Tamil Nadu Sales Tax Appellate Tribunal within the prescribed period. Whether or not the petitioner has got sufficient cause for not filing the appeal before the Tamil Nadu Sales Tax Appellate Tribunal under Section 58(1) of the TNVAT Act, will have to be considered by the Tribunal as and when any appeal is filed by the petitioner. It is not for this Court to adjudicate on the issue as to whether the petitioner has got sufficient cause for not filing an appeal within the prescribed period.

15. Therefore, this Court leaves it open for the petitioner to satisfy the requirements of Section 58(1)(b) of the TNVAT Act, 2006 and satisfy the Tamil Nadu Sales Tax Appellate Tribunal, with sufficient cause for not having filed the appeal within the extended period of 60 days. As and when any appeal is filed under Section 58 of the TNVAT Act against the impugned order dated 03.04.2018, the Tamil Nadu Sales Tax Appellate Tribunal shall decide as to whether the appeal has been filed within the maximum period stipulated under



the said Section or not. But, however, from the foregoing reasons, it is evident that the first respondent under the impugned order has neither violated the principles of natural justice nor has passed the order by total non-application of mind. In the result, there is no merit in this Writ Petition.

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16. Accordingly, the Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

To

1. The Appellate Deputy Commissioner (CT) (FAC),
Trichy - 620 020.

2. The Assistant Commissioner (CT),
Rock Fort Assessment Circle,
Trichy - 620 020.

+1 CC to M/s. The Special Government Pleader in SR-59529

W.P. [MD] No. 6807 of 2019
05.04.2019
(4/5)

MR

PK/16.04.2019 : 7P/4C