BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.03.2019**

CORAM
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
W.P.(MD).No.16189 of 2017
and
W.M.P.(MD) No.12868 of 2017

M/s.Alagar Jewellers,
Rep., by A.Jayaraman,
248, W.G.C. Road,
Tuticorin -2 ... Petitioner

-vs-

1) The Appellate Deputy Commissioner (CT),
1st Floor, Commercial Taxes Buildings,
Reserve Line Road, Tirunelveli.

2) The Assistant Commissioner (CT) – II,
Commercial Tax Buildings,
Tuticorin. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to order dated 7.4.2017 passed by the 1st respondent in Appeal No. & Year VAT AP NO. 224/2015 and quash the same as arbitrary and illegal and direct the 1st respondent to entertain the appeal and decide the same on merits.

For Petitioner : Mr.N.Sudalaimuthu

For Respondents : Mr.M.Jeyakumar,
Additional Government Pleader.

O R D E R

The instant writ petition has been filed challenging the impugned order dated 07.04.2017 passed by the first respondent in Appeal No. & Year VAT AP NO. 224/2015.

2. The petitioner is a registered dealer under the Tamil Nadu Value Added Tax (TN VAT) Act, 2006. According to the petitioner, as against the Assessment order dated 07.05.2015 passed under Section 27 of the TN VAT Act, 2006 by the second respondent, they preferred an Appeal before the first respondent on 28.07.2015 under Section 51 of the TN VAT Act,2006.

3. It is the case of the petitioner that they received the original assessment order dated 07.05.2015 on 12.05.2015. After receipt of the original Assessment order dated 12.05.2015, they filed an application under Section 84 of the TN VAT Act, 2006 seeking for rectification on 04.06.2015 which came to be rejected on 25.06.2015. Thereafter, the petitioner filed an appeal against the original assessment order dated 28.07.2015 before the first respondent under section 51 of the TN VAT Act, 2006. But the first respondent dismissed the Appeal on the ground that the Appeal has been filed beyond the prescribed period of 60 days as stipulated under Section 51 of the TN VAT Act, 2006.

4. It is the case of the petitioner that the period during which the application under section 84 of the TN VAT Act, 2006 was pending before the second respondent, has got to be excluded for the purpose of calculating the period of limitation as stipulated under section 51 of the TN VAT Act, 2006. Aggrieved by the impugned order dated 07.04.2017 of the first respondent, the instant writ petition has been filed. It is the case of the petitioner that the original assessment order dated 07.05.2015 gets merged with the order passed under Section 84 of the TN VAT Act, 2006 on 25.06.2015.

5. Heard Mr.N.Sudalaimuthu, learned counsel for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader appearing for the respondents.

6. Learned counsel for the petitioner drew the attention of this Court to the judgment made by the learned Single Judge of this Court dated 02.09.2016 passed in W.P.(MD) No.30883 of 2016 in the case of ***Tvl.K.A.S.Industries India Private Limited vs the Assistant Commissioner and another*** involving an identical issue, where the learned Single Judge following the Division Bench judgment of this Court in the case of ***State of Tamil Nadu vs Speedline Agencies*** reported in **114 STC 359** held that 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 the rectification is ordered and as a consequence, one of the party is aggrieved by such modification, a remedy is required to be provided. The relevant portion of the said judgment is extracted as under:-

> "*7. Similar view was also taken in the decision of this Court reported in 114 STC 359 STATE OF TAMIL NADU v. SPEEDLINE AGENCIES. This Court, in paragraph 5 of the judgment, pointed out as follows:-*
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> > *"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 light of the above stated decisions and in view of Section 55(4) of the Act, the first question is answered against the Revenue. Thus, as against the order of rectification passed resulting in the modification of the original order passed, the assessee has the right of appeal before the appellate forum.

9. In the light of the above discussion and the decision of the Hon'ble Division Bench of this Court, the impugned order calls for interference. Accordingly, the writ petition is allowed and the impugned order is set aside and the appeal petition is restored to the file of the second respondent, who shall hear and decide the appeal on merits and in accordance with law. Consequently, connected miscellaneous petition is closed. No costs."

7. In the instant case, the original assessment order dated 07.05.2015 was received by the petitioner on 12.05.2015. Thereafter, the petitioner filed a rectification application under Section 84 of the TN VAT Act, 2006 on 04.06.2015 which was rejected by the second respondent on 25.06.2015 and the rejection order copy was received by the petitioner on 01.07.2015. The period of 21 days when the application for rectification was kept pending before the second respondent under Section 84 of the TN VAT Act, 2006 has to be excluded for the purpose of calculating the period of limitation. If that period is excluded, the appeal filed by the petitioner before the first respondent on 28.07.2015 is well within the prescribed period of 60 days as stipulated under Section 51 of the TN VAT Act, 2006.

8. Following the Division Bench judgment of this Court referred to supra and the learned Single Bench judgment, the first

respondent ought to have entertained the Appeal and passed orders in accordance with law but in the instant case it has not been done so. Therefore, this Court is of the considered view, that in the light of the above discussion and in the light of the decision of the Hon'ble Division Bench of this Court as well as the learned Single Judge of this Court, **this Writ Petition is Allowed** and the impugned order of the first respondent is set aside and the Appeal petition is restored to the file of the first respondent, who shall admit and decide the writ appeal on merits and in accordance with law. No costs. Consequently, W.M.P.(MD) No.12868 of 2017 is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1) The Appellate Deputy Commissioner (CT),
   1st Floor, Commercial Taxes Buildings,
   Reserve Line Road, Tirunelveli.

2) The Assistant Commissioner (CT) – II,
   Commercial Tax Buildings,
   Tuticorin.

+1 CC to M/s.SPL GP (SR-55689[F] dated 21/03/2019)

STS

Order made in
W.P.(MD).No.16189 of 2017
20.03.2019

KM/(15.04.2019) 4P 4C