BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.06.2019

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P(MD).No.22385 of 2016

Tvl.Vaseekar Hardwares,
Represented by its Proprietor,
F.Lodgement P.Rayan ...Petitioner

Vs.

1.The Appellate Deputy Commissioner(CT),
Thirunelveli,Commercial Tax Office,
A.R.Line Road, Thirunelveli.

2.The Commercial Tax Officer,
Thirunelveli Bazaar Assessment Circle,
Commercial Taxes Office,
A.R.Line Road,Palayamkottai,
Thirunelveli District-627 002. ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of certiorarified mandamus calling for records pertaining to the impugned proceedings of the first respondent in Na.Ka.A1/222/16 dated 04.08.2016 and quash the same and consequently direct the first respondent to admit the appeal filed by the petitioner.

For petitioner : Mr.R.Veeramanikandan
For Respondents : Mr.A.Thiyagarajan
Government Advocate

O R D E R

The petitioner challenges an order passed by the first respondent, the Appellate Deputy Commissioner rejecting the appeal filed by the petitioner as non-maintainable.

2.The period in question is 2011-2012. Vide order dated, the officer has proceeded to revide the original assessment dated 08.08.2012 effecting two modifications to the returned turnover. The assessee/petitioner states that it had collected tax on the sales effected by it on the bonafide assumption that its turnover would exceed the taxable limit. However, in so far as the turnover stayed within the exempt threshold, the officer invoked the provisions of Section 41 of the Tamilnadu Value Added Tax Act, 2006 (in short 'Act'), forfeiting the tax collected by the petitioner.

3. The petitioner had claimed tax credit of a sum of Rs.60,691/- and had set-off a sum of Rs.45,147/- as against output tax paid. The balance of Rs.15,544/- was carried forward to the next year. The officer also consequent upon the forfeiture effected, reverses the Input Tax Credit (in short 'ITC') claimed, not proportionate to the tax forfeited, but in full.

4. The petitioner challenged both issues, the forfeiture of tax as well as the reversal of credit in appeal by way of parallel/simultaneous remedies, an appeal in terms of Section 51 of the Act as well as a petition for revision as against the order to forfeit, in terms of Section 54 of the Act. The first respondent however, has returned the appeal as non- maintainable on the ground that forfeiture of tax under Section 41 is liable to be addressed only by way of revision and not by way of appeal. Hence this writ petition.

5. Section 51 of the Act deals with appeals to be filed before the Appellate Deputy Commissioner and reads as follows:

> 'Appeal to Appellate (Deputy) Commissioner – (1) Any person objecting to an order passed by the appropriate authority under Section 22, Section 24, Section 26, sub-sections (1),(2),(3) and (4) of Section 27, Section 28, Section 29, Section 34 or sub-section (2) of section 40 other than an order passed by an (Deputy) Commissioner (Assessment) may, within a period of thirty days from the date on which the order was served on him, in the manner prescribed, appeal to the Appellate (Deputy) Commissioner having jurisdiction.'

6. Section 53 of the Act deals with Special powers of the Joint Commissioner to revise orders either at the instance of the assessee or suo motu. A combined reading of Sections 51 and 53 of the Act makes it clear that those matters covered by orders not specifically set out under Section 51 are liable to be challenged only by way of revision before the revisional authority.

7. The petitioner has thereafter, rightly filed a revision petition challenging the forfeiture of tax under Section 41 of the Act under order dated 04.01.2016 and has parallely filed an appeal before the Appellate Authority. The narration and grounds raised are identical in both petitions. Seeing as the two issues are interrelated, the question of grant of ITC/reversal/carry forward shall have be decided only after the issue relating to forfeiture of taxes is decided by the revisional authority.

8. The petitioner is permitted to re-present its appeal dated 30.03.2016 before the first respondent within a period of two weeks from date of receipt of a copy of this order. Such re-presentation, if effected within the time frame stipulated above, shall be accepted by the first respondent and the appeal decided on the

question of reversal of ITC, in accordance with law and in line with the decision of the Joint Commissioner in the Revision Petition as and when rendered, after hearing the petitioner.

9.This writ petition is allowed in the above terms. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

To,

1.The Appellate Deputy Commissioner(CT),
Thirunelveli,Commercial Tax Office,
A.R.Line Road, Thirunelveli.

2.The Commercial Tax Officer,
Thirunelveli Bazaar Assessment Circle,
Commercial Taxes Office,
A.R.Line Road,Palayamkottai,
Thirunelveli District.

+1CC TO SPECIAL GOVERNMENT PLEADER, SR NO.69417

W.P(MD).No.22385 of 2016
17.06.2019

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