BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.02.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
WP(MD)No.9591 of 2019
and WMP(MD)Nos.7536 & 7537 of 2019

M/s.David Containers India (P) Ltd.,
No.148, Ramaiah Street,
Jaihindpuram,
Madurai - 11,
Rep.by its Managing Director ... Petitioner

Vs.

1.The Appellate Deputy Commissioner (ST),
Madurai (South), Madurai.

2.The Assistant Commissioner (ST)(FAC),
Madurai (Rural) South Asst Circle,
Madurai. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, to call for the records in the Original Impugned assessment order dated 03/11/2014, TIN 33455165191/ 2012-2013, passed by the 2nd respondent and the impugned appellate order dated 28/02/2019 passed in A.P.No.18/2015 by the 1st respondent and the consequential impugned demand notice dated 08/04/2019 issued by the 2nd respondent and quash them, and further direct the 2nd respondent to rehear the matter as per law afresh.

For Petitioner : Mr.C.Dhanaseelan

For Respondents : Mr.J.Padmavathi Devi
Special Government Pleader

ORDER

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader for the respondents.

2.The petitioner suffered an adverse order dated 03.11.2014 at the hands of the second respondent. Questioning the same, the petitioner filed AP No.18 of 2015 before the first respondent under Section 51 of the TNVAT Act, 2006. The said appeal came to be dismissed on 28.02.2019 not on merits but on the ground that the amount as computed under Section 51 of the Act has not been remitted as a pre-deposit. So holding, the appeal petition was dismissed as not entertainable. Questioning the order dated 28.02.2019, the present writ petition came to be filed.

3.The learned counsel for the petitioner would point out that the order passed by the original authority suffers from certain obvious mistakes and and if corrections suggested by the petitioner are taken note of, then, this Court can come to the conclusion that pre-deposit was correctly made. Though the petitioner's counsel's contention appears to be persuasive, I am of the view that so long as the order passed by the original authority remains as it is, it is for the appellate authority to entertain the exercise of checking if the said order is free of arithmetical and mathematical error. The petitioner ought to have applied for rectification if the order of the original authority suffers from mistakes.

4.At this stage, the impugned order cannot be interfered with. However, the petitioner is given liberty to file a petition under Section 84 of the TNVAT Act, 2006. I am conscious that the rectification petition ought to be filed within six years. If according to the appellate authority, the mandatory pre-deposit condition was not fulfilled, the appeal petition could not have been numbered. Therefore, the petitioner cannot be made to suffer for the error committed by the first respondent. It is also noted that this writ petition has been pending before this Court for almost two years. If the period during which the appeal was pending before the first respondent and the writ petition was pending before this court is excluded, the rectification petition would be within time. If the petitioner files a petition under Section 84 of the Act within a period of four weeks from the date of receipt of copy of this order, the same will be considered and entertained without reference to limitation. I make it clear that I have not gone into the merits of the matter. Other contentions are left open. It is needless to say that the petition for rectification under Section 84 of the Act will lie only before the original assessing authority.

5.The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Appellate Deputy Commissioner (ST),
  Madurai (South), Madurai.

2.The Assistant Commissioner (ST)(FAC),
  Madurai (Rural) South Asst Circle,
  Madurai.

+1 CC to M/s.SPL GP (SR-6973[F] dated 24/02/2021)

+1 CC to M/s.C.DHANASEELAN, Advocate (SR-7346[F] dated 25/02/2021)

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23.02.2021

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