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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.02.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.9898 of 2019
and
W.M.P.(MD)No.7756 of 2019

Dalmia Cement (Bharat) Limited,
rep.by Shri.R.Gururajan,
Deputy Executive Director
(Finance and Accounts),
Trichy District- 621 651. : Petitioner

Vs.

1.The State Tax Officer,
Lalgudi Assessment Circle,
Lalgudi, Trichy.

2.The Joint Commissioner (ST),
Trichy Division, Trichy -1. : Respondents

PRAYER :- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records on the files of the second respondent herein in L.Dis.558/2019-A2 dated 25.01.2019 quash the same and to direct the second respondent to dispose the revision petition filed by the petitioner against the proceedings of the first respondent in TIN.33363483115/2010-11 dated 02.01.2019 on merits.

For Petitioner :Mr.N.Sriprakash
for Mr.J.Inbarajan

For Respondents :Mrs.J.Padvamathidevi
Special Government Pleader

ORDER

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

2.The petitioner is an assessee registered with the first respondent. The first respondent initiated action under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 (in short “the Act”) and

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passed final order under the said provision on 30.05.2018. The said order is an appealable order. Instead of availing appeal remedy, the petitioner filed a petition for rectification of the order dated 30.05.2018 under Section 84 of the Act. The rectification petition filed by the petitioner was dismissed by the first respondent vide order dated 02.01.2019. Aggrieved by the same, the petitioner filed a revision petition under Section 54 of the Act. The said petition was returned as not maintainable by the impugned communication dated 25.01.2019. Challenging the same, the present Writ Petition has been filed.

3.The second respondent has filed a counter affidavit calling upon this Court to sustain the communication impugned in this Writ Petition. In paragraph No.8 of the counter affidavit, it has been categorically asserted that the Writ petitioner ought to have filed an appeal before the Appellate Deputy Commissioner in terms of Section 84(5) of the Act. It is reiterated that the second respondent has rightly declined to entertain the revision petition.

4.I cannot endorse the stand taken by the second respondent. As rightly contended by the learned Counsel for the petitioner, an appeal could have been filed against the order under Section 51 of the Act before the Appellate Deputy Commissioner. The learned Counsel for the petitioner took me through the relevant Sections namely, Section 51(1), 52(1), 54(1) and 84(5) of the Act, which read as follows:

> ***51.Appeal to Appellate 2[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 3[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 3[Deputy] Commissioner having jurisdiction:*
>
> ***52.Appeal to Appellate 1 [Joint] Commissioner:*** - *(1) Any person objecting to an order passed by the 1[Deputy] Commissioner (Assessment) 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 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 1[Joint] Commissioner having jurisdiction:*
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> ***54.Powers of revision of 1[Joint] Commissioner.***-- *(1) Any person objecting to an order passed Or Proceeding recorded under this Act for which an appeal has not been provided for in section 51 or section 52 may within a period of thirty days from the date on which a copy of the order or proceeding was served on him, in the manner*

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prescribed file an application for revision of such order or proceeding to the 1[Joint] Commissioner:

"84.Power to rectify any error apparent on the face of the record.--

.....

(5) The provisions of this Act relating to appeal and revision shall apply to an order or rectification made under this section as they apply to the order in respect of which such order of rectification has been made."

5.The learned Counsel for the petitioner draws my attention to the decisions reported in ***1977 39 STC 260 (Mad)*** (***The State of Tamil Nadu vs The Crompton Engineering Company (Madras) Limited***) and ***1977 SCC Online Mad 403*** (***The State of Tamil Nadu vs The Crompton Engineering Company (Madras) Limited***). The learned Judges while construing similar provisions, held that if the original assessment order is rectified or modified, then an appeal would lie. If on the other hand, the rectification petition filed by the assessee is dismissed, then an appeal will not lie and only a revision will lie.

6.The converse situation obtained in WP No.25433 of 2016 (Tvl.Artis Leathers vs. the Assistant Commissioner (CT), Erode). The dealer suffered an adverse order and to rectify the same filed a petition under Section 84 of the TNVAT Act, 2006. The petition was substantially allowed. But on one issue, an adverse finding was given. Therefore, the dealer preferred an appeal. The appeal was rejected as not entertainable by the appellate authority. Questioning the same, he filed the aforesaid writ petition. While allowing the writ petition, the learned Judge held as follows :

"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:-

"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

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> *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.
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> 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."

7.Respectfully following the aforesaid decisions, I hold that an order dismissing the petition for rectification filed under Section 84 of the Act is only revisable under Section 54 of the Act and not appealable either under Section 51 or 52 of the Act. The second respondent erred in holding that the revision filed by the writ petitioner is not maintainable. Hence, the communication impugned in this writ petition is quashed and the matter is remitted to the respondents for fresh consideration. The petitioner is at liberty to re-present the returned papers. The learned Counsel for the petitioner states that within two weeks from the date of receipt of copy of this order, the returned papers will be re-presented before the second respondent. The second respondent is directed to number the same and dispose it of on merits and in accordance with law.

8.The Writ Petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)

skm

To

1.The State Tax Officer,
Lalgudi Assessment Circle,
Lalgudi, Trichy.

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2.The Joint Commissioner (ST),
Trichy Division, Trichy -1.

+1 CC to M/s.N.INBARAJAN, Advocate (SR-6511[F] dated 22/02/2021)

+1 CC to M/s.SPL GP (SR-6657[F] dated 23/02/2021)

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ES(CO)
KK(25.03.2021) 5P 5C

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