IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.11121 of 2022
and
W.M.P.No.10705 of 2022

Tvl. New Popular Electronics Furniture,
Rep. by its Proprietrix V.Faritha
No.90, Vandhavasi Road,
Sothupakkam, Maduranthagam,
Kancheepuram 603 3019 ... Petitioner

Vs.

1.The Assistant Commissioner [ST],
Madurantakam Assessment Circle
15/9, Car Street,
Maduranthagam.

2.The Appellate Deputy Commissioner [CT] I,
3rd floor, P.A.P.J.M. Building Annexure,
No.1, Greams Road,
Chennai – 6. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records in the files of the 2nd respondent in APV 32/2020 dated 20.04.2021 and the order passed in RC No.137/2022 dated 07.04.2022 and quash the same is illegal, invalid without

Jurisdiction and violated the principles of natural justice.

For Petitioner	:	Mr.D.Vijayakumar
For Respondents	:	Ms.Amirtha Poonkodi Dinakaran Government Advocate

ORDER

The petitioner has challenged the impugned order dated 20.04.2021 passed by the second respondent herein in APV No.32/2020 and order dated 07.04.2022 passed by the second respondent in his proceeding bearing References No.137/2022.

2. By the impugned order dated 20.04.2021 in APV No.32 of 2020, the second respondent/Appellate Deputy Commissioner had partly dismissed the appeal and remanded the case back to the 1st respondent to pass a speaking order. Pursuant to the impugned order dated 20.04.2021 of the second respondent in APV.No.32/2020, the first respondent has passed *de novo* order dated 05.10.2021 in his proceeding bearing Reference in RC.No.137/2022.

3. Aggrieved by the *de novo* order dated 05.10.2021, the petitioner has also filed an appeal before the second respondent on 15.11.2021. The second respondent has rejected the appeal vide second mentioned impugned

order/communication dated 07.04.2022 bearing Reference in RC.No.137/2022. Vide order dated 20.04.2021, the second respondent Appellate Commissioner has rejected the appeal at the preliminary stage with the following observations:-

> *"... I have verified the appeal file in APV/32/2020 dated 20/04/2021 wherein the appellants authority has clearly stated that no documents filed and hence dismissed.*
>
> *As no documentary evidence matching the dismissed turnover available in the appeal file and hence the plea to reopen the appeal petition is not considered and hence the same is rejected.*
>
> *In view of the above facts and circumstances, the appeal petition filed in this office against the effect giving order passed by the assessing authority as per the appellate order in APV/32/2020 dated 20.04.2021 is not entertainable and hence the appeal petition is rejected."*

4. Learned counsel for the petitioner further submitted that the petitioner has also filed an application under Section 84 Tamil Nadu Value Added Tax, 2006 (TNVAT Act, 2006) against the order dated 20.04.2021 of the *de novo* order before the 2nd respondent which is yet to be disposed.

5. Learned counsel for the respondent submits that there is no merits in the challenge to the impugned orders. It is submitted that it is for the petitioner to work out his remedy in the manner known to law by filing

appeal before the Appellate Tribunal under the provisions of the TNVAT Act, 2006. That apart, it is submitted that the petitioner has not filed any document before the 2nd respondent/Appellate Deputy Commissioner in the 2nd round of appeal and therefore, the appeal that was subsequently filed, which was dismissed at the preliminary stage cannot be interfered with. Hence, prays for dismissal of the Writ petition.

6. I have considered the arguments advance by the learned counsel for the petitioner and the respondent.

7. In my view, the appeal that was filed by the petitioner against the de novo passed on 05.10.2021 for the relevant assessment year pursuant to remand order dated 20.04.2021 ought not to have dismissed *in limine* without even numbering the appeal as the right of the appeal before the Tribunal stands compromised by the impugned order. Thus, the petitioner was constrained to approach this Court by way of this Writ petition.

8. Under these circumstances, impugned order dated 07.04.2021 bearing reference in RC.No.137/2022 passed by the 2nd respondent/Appellate Deputy Commissioner [CT] I, Chennai stands quashed and the case is remitted back to the 2nd respondent to number the appeal and dispose the appeal in accordance with law within a period of eight (8) weeks

from date of receipt of a copy of this order along with the application filed by the petitioner under Section 84 on the TNVAT Act, 2006 on 10.07.2021 for rectification of the order passed on 20.04.2021 in A.P.V.No.32 of 2020.

9. This Writ petition stands allowed in the above terms. No costs. Connected Miscellaneous petition is closed.

07.07.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

mpl

To

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C.SARAVANAN, J.
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