IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.19269 of 2015
AND M.P.NO.1 OF 2015

Canon India Private LImited,
represented by its Assistant Manager,
Credit, Finance and Accounts,
NO.6/23, Shiva Ganga Road,
Nungambakkam, Chennai - 600 034. ... Petitioner

Vs.

1. The Assistant Commissioner (CT),
Valluvarkottam Assessment Circle,
No.10, Palaniappa Maligai,
Greams Road, Chennai - 600 006,

2. Commissioner of Commercial Taxes,
Chepauk, Ezhilagam Complex,
Chennai - 600 005,

3. Government of Tamil Nadu,
represented by its Secretary,
Commercial Taxes Department,
Fort St.George, Chennai - 600 009. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of certiorarified mandamus to call for the records relating to the Order passed by the 1st respondent in CST/700790/2006-07 dated 5th June, 2015, quash the same and consequently direct the 1st respondent to complete the assessment after considering the C Forms and the F Forms already submitted by the petitioner on 29th Febraury, 2012.

For Petitioner : Mr.R.Parthasarathy

For Respondents : Mr. A.N.R.Jayapratap,
Govt.Advocate (Taxes)

ORDER

This writ petition has been filed by Canon India Private Limited represented by its Assistant Manager challenging the impugned order dated 5.6.2015 passed by the Assistant Commissioner (CT), Valluvarkottam Assessment Circle, in and by which the assessing officer has come to the conclusion that the dealer - petitioner herein has not produced C forms and F forms in his office. Therefore, he has come to the conclusion to re-determine the total and taxable turnover. Aggrieved by the impugned order, the petitioner has also filed an application under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 (in short, ''TN VAT Act, 2006) seeking rectification of the mistake before the Assistant Commissioner (CT), taking a stand that they have claimed concessional rate of inter-State sales against C forms for Rs.1,53,38,666/-, for which they had submitted 23 Nos. of C Forms for Rs.1,51,02, 911/- on 5.11.2009 and they have also submitted 82 Nos. of F forms for Rs.13,58,17,777 on 16.11.2009. In the copy of the delivery book of the petitioner, the respondent had acknowledged the receipt of both the C forms and F forms.

2. In this background, the grievance of the petitioner is, when Section 84 of the TN VAT Act clearly empowers the assessing Officer or an appellate or revising authority including the Appellate Tribunal to rectify any error apparent on the face of the record at any time within five years from the date of any order passed, surprisingly, the 1st respondent has completely failed to look into the legal position by keeping the application filed under Section 84 of the Act unattended. The inaction on the part of the 1st respondent in not looking to the grievance of the petitioner has been brought to the notice by way of an application filed under Section 84 before the Principal Secretary/ Commissioner of Commercial Taxes, Chennai. But ironically, even the Principal Secretary/Commissioner of Commercial Taxes also has wrongly turned down the request asking the petitioner to prefer a revision petition before the Joint Commissioner (CT), Chennai (Central) Division as provided under Section 54 of the TN VAT Act read with rule 14(7) in Form Y available in the Commercial Taxes Department Website.

3. Agreeing to the fact that the impugned order is appealable in nature, learned counsel for the petitioner has submitted that the petitioner right from the date of effect of sales in terms of Section 8(1) of the C.S.T.Act, to avail the benefit of concessional rate under the said provision has submitted C forms - 23 in number to the 1st respondent to the tune of RS.1,51,02,911/- on 5.11.2009 and the 1st respondent has also acknowledged the receipt of these C forms in the petitioner's delivery book and that apart the respondent also acknowledged the receipt of F forms in 82 Nos. on 16.11.2009 to claim exemption under Section 6A of the C.S.T.Act. However, for the reasons best known, the respondent has come to the conclusion that the petitioner has not filed the aforementioned C forms and F forms. When the petitioner has repeatedly shown before the 1st respondent the proof of acknowledgment given by the Office of the 1st respondent with regard to the filing of the aforementioned both C and F forms, atleast, in all fairness the application filed by the petitioner under Section 84 of the TN VAT Act for rectification of the error could have been looked into. As it has not been done so, the petitioner was put to great hardship i.e., in the event of driving him again to file revision.

4. It is at this point of time the learned Government Advocate appearing for the respondents, taking note of the fact that the assessing officer, who has seized of the application filed under Section 84 of the TN VAT Act has to answer the pending application, has rightly suggested that without reference to the communication issued by the Principal Secretary/ Commissioner of Commercial Taxes, Chennai in his proceedings dated 19.6.2015, a direction may be given to the 1st respondent to consider the pending application filed by the petitioner under Section 84 of the TN VAT Act, as the 1st respondent has got ample power to consider the said application within five years from the date of passing of the order.

5. In this regard, it is relevant to extract Section 84 of the TN VAT Act as under:

> ''84. Power to rectify any error apparent on the face of the record. -
>
> (1) An assessing authority or an appellate or revising authority (including the Appellate Tribunal) may, at any time within five years from the date of any order passed by it, rectify any error apparent on the face of the record:
>
> Provided that no such rectification which has the effect of enhancing an assessment or any penalty shall be made unless such authority has given notice to the dealer and has allowed him reasonable opportunity of being heard.
>
> (2) Where such rectification has the effect of reducing an assessment or penalty, the assessing authority shall make any refund, which may be due to the dealer.
>
> (3) Where any such rectification has the effect of enhancing an assessment or penalty, the assessing ; authority shall give the dealer a revised notice of assessment or penalty and thereupon the provisions of this Act and the Rules made thereunder shall apply as if such notice had been given in the first instance.
>
> (4) The powers under sub-section (1) may be exercised by the assessing authorities even though the original order of assessment, if any, passed in the matter has been the subject matter of an appeal or revision.
>
> (5) The provisions of this Act relating to appeal or 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.''

6. A close reading of the above Section obliges the assessing officer, who has passed the impugned assessment order, to consider the application filed by the petitioner under Section 84 of TN VAT Act on merits and in accordance with law.

7. Therefore, this Court, without travelling on the merits of the matter, hereby directs the 1st respondent to consider the pending application filed by the petitioner under Section 84 of the TN VAT Act along with the acknowledgment receipts of the forms issued by the 1st respondent and pass orders on merits and in accordance with law within a period of four weeks from the date of receipt of copy of this order. Needless to mention that the 1st respondent shall not proceed with any coercive steps against the petitioner till then.

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

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT),
Valluvarkottam Assessment Circle,
No.10, Palaniappa Maligai,
Greams Road, Chennai - 600 006,

2. Commissioner of Commercial Taxes,
Chepauk, Ezhilagam Complex,
Chennai - 600 005,

3. The Secretary,
Commercial Taxes Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600 009.

1 cc to Government Pleader(Taxes) High Court, Madras.Sr.No.33013

1 cc to Mr.Lakshmikumaran , Advocate Sr.No.32872

W.P.No.19269 of 2015

jsv(co)
pmk.23.7.2015