IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2016

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.2208 of 2015
&
W.M.P.Nos.1990 and 1901 of 2016

Sellammal Spinners (P) Ltd.,
Represented by its Director,
S.Nalli And Kumar,
232/B, Kovai Main Road,
Annur, Coimbatore District.
[PETITIONER]

Vs

The Assistant Commissioner (CT)
Avinashi Assessment Circle,
Avinashi. [RESPONDENT]

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records relating to the proceedings of the respondent in TIN 33662081106/2013-14 dated 09.10.2015 and the consequential order in TIN 33662081106/2013-14 dated 21.12.2015, quash the same.

For Petitioner : Mr.S.Raveekumar

For Respondent : Mr.S.Kanmani Annamalai,
Spl. Govt. Pleader

O R D E R

Heard Mr.S.Raveekumar, learned Counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, who accepts notice for the respondent and with their consent the Writ Petition is taken up for final disposal.

2.The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act and the Central Sales Tax Act, 1956. The challenge in this Writ Petition is to an order dated 09.10.2015, in and by which, the proposal made in the notice dated 21.09.2015 was confirmed by the Assessing Officer and the Input Tax Credit availed for the entire turnover has been reversed. On receipt of the impugned order dated 09.10.2015, the petitioner has filed a petition under Section 84 of TNVAT on 26.10.2015. In the said petition, the petitioner pointed out that their objections dated 01.10.2015 to the notice dated 21.09.2015 was not correctly appreciated and therefore, the petitioner furnished the statements of local and inter-state purchase of raw material (cotton) and local sales of cotton and inter-state sales of yarn during the period from 11.11.2013 to 31.03.2014. Further, they stated that stock of cotton during manufacturing process was mingled and therefore in respect of the finished product of yarn consists of local and inter-state purchase of cotton, the proportionate purchases of local and interstate were stated in a tabulated form. Therefore, the petitioner contended that without considering the inter-state purchase of raw materials (cotton), an order has been passed reversing Input Tax Credit for the entire turnover. Therefore, the petitioner sought for revision of the order, dated 09.10.2015. However, the respondent by the order dated 21.12.2015, which is also impugned in this writ petition, stated that the petitioner should seek legal remedy before the Appellate Forum.

3.Section 84 of the TNVAT Act, confers the power on the assessing authority or Appellate Authority or Revising Authority including the Appellate Tribunal to rectify any error apparent on the face of record, at any time, within five years from the date of any order passed by it. In terms of proviso under sub-section (1) of Section 84 of the Act, 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.

4.The Scope of Section 84 of the Act has been interpreted in several decisions and it has been held that the mistakes are not only clerical mistakes or calculation mistakes which could be rectified in exercise of power under Section 84 of the Act, but the power is, in fact, akin to the power of review. Therefore, the respondent was not right in rejecting the petitioner's application under Section 84 of the Act by observing that he has to seek the legal remedy before the Appellate Authority.

5.The respondent was required to consider whether the errors pointed out by the petitioner was an error apparent on the face of record falling within the scope of Section 84 of the Act and thereafter take a decision on merits and in accordance with law. Therefore, the impugned order dated 21.12.2015 calls for interference.

6.Accordingly, the Writ Petition is partly allowed, the order dated 21.12.2015 is set aside and the matter is remanded to the respondent for consideration of the petitioner's application filed under Section 84 of the Act, afford an opportunity of personal hearing to the petitioner and pass orders on merits and in accordance with law as expeditiously as possible. The petitioner during the course of personal hearing, is entitled to produce the documents to substantiate their plea, which shall also be considered by the respondent. No costs. Consequently, connected Miscellaneous Petitions are closed.

27.01.2016

Index : Yes/No
Internet : Yes/No

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To

The Assistant Commissioner (CT)
Avinashi Assessment Circle,
Avinashi.

T.S.SIVAGNANAM.J

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