IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2015

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.38722 to 38726 of 2015 and
MP.Nos.1,1,1,1 & 1 of 2015

M/s.Malladi Drugs & Pharmaceuticals Ltd., rep.by its General Manager-Finance Mr.V.Krishnakumar .Petitioner(in all WPs.)

Vs

1.The Assistant Commissioner-CT, Nandambakkam Assessment Circle, No.17, II Street, Loganathan Nagar, Choolaimedu, Chennai-94.

2.The Assistant Commissioner-CT, Guindy Assessment Circle, Chennai-28.

3.The Joint Commissioner (Chennai-East)-CT, PAPJM Building, Greams Road, Chennai-6.

4.The Commissioner of Commercial Taxes-TN, Ezhilagam, Chennai-5. ..Respondents(in all WPs.)

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records of the orders under reference (i) TIN/33500902741/2006-07 dated 2.6.2015 (ii) TIN/33500902741/2007-08 dated 5.6.2015 (iii) TIN/33500902741/2008-09 dated 8.6.2015 (iv) TIN/33500902741/2009-10 dated 12.6.2015 (v) TIN/33500902741/2010-11 dated 15.6.2015 respectively passed by the first respondent and culminating the orders in TIN/33500902741/2006-07, TIN/ 33500902741/2007-08, TIN/33500902741/2008-09, TIN/33500902741/ 2009-10 and TIN/33500902741/2010-11 dated 30.10.2015 passed by the first respondent, quash the same as illegal and arbitrary and direct the first respondent to pass fresh orders by providing personnel hearing to the petitioner and consider removal of erroneous tax claims.

For Petitioner : Mr.Joseph Prabhakar
for Mr.G.Vijayakumar
For Respondents: Mr.S.Kanmani Annamalai, AGP

COMMON ORDER

Heard Mr.Joseph Prabhakar, learned counsel appearing on behalf of Mr.G.Vijayakumar, learned counsel on record for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice for the respondents. By consent, the writ petitions are taken up for final disposal.

2. The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter called the TNVAT Act, 2006) and the provisions of the Central Sales Tax Act, 1956. The second respondent, who was the Original Assessing Authority of the petitioner, issued a notice dated 23.6.2014, proposing to revise the assessments for the assessment years from 2006-07 to 2010-11.

3. The petitioner submitted their reply to the first respondent, since, by then, the files were transferred to the first respondent, who became the Assessing Officer of the petitioner. Thereupon, the revised orders of assessment were passed by the first respondent, as against which, the petitioner did not file any appeal, but filed petitions under Section 84 of the TNVAT Act, 2006 to the third respondent stating that there is an error apparent on the face of the orders of revised assessment and requested the third respondent to exercise his powers under Section 84 of the TNVAT Act, 2006 and consider their case.

4. The petitioner also filed their written submissions before the first respondent. Thereafter, the first respondent issued a notice to the petitioner granting them an opportunity of personal hearing with liberty to produce documents in proof of the points raised by them. This has been done by the petitioner and they also submitted their written submissions. Thereafter, the impugned orders have been passed by the first respondent holding that the expression 'error apparent on the face of the record' used in Section 84 of the TNVAT Act, 2006 could be resorted to only for correction of clerical and arithmetical mistakes.

5. On a perusal of the impugned orders, it is seen that the first respondent did not examine the merits of the petitions filed under Section 84 of the TNVAT Act, 2006, but rejected them at the threshold on the ground that they are not maintainable.

6. The legal issue would be as to the scope and jurisdiction of the first respondent, while exercising powers under Section 84 of the TNVAT Act, 2006. This issue is no longer res integra, as it has already been decided by the Honourable Division Bench of this Court in Khivraj Motors Limited Vs. Assistant Commissioner (CT) and another [W.A.Nos.3201 to 3204 of 2004 dated 4.2.2010]. The said case arose under the provisions of Section 55 of the Tamil Nadu General Sales Tax Act, which is in pari materia with Section 84 of the TNVAT Act, 2006. While explaining the power under the said provision, the Honourable Division Bench observed as follows :

> "6. In this context, we may mention whether on the given facts of the case, an application for rectification could be filed. Section 55 of the Tamil Nadu General Sales Tax Act empowers either an Assessing Authority or an Appellate Authority or a Revisional Authority including the Appellate Tribunal to pass an order to rectify any error apparent on the face of record. Such a power could be exercised by the respective Authorities at any time within a period of five years from the date of any order passed by the respective Authorities. Nevertheless, in terms of proviso to the said Section, no such rectification, which has the effect of enhancing the assessment or any penalty, shall be made unless such Authority has given notice to the dealer and has allowed him a reasonable opportunity of being heard. For the purpose of present controversy, the provision of Sub-Section (1) of Section 55 alone could be made applicable.
>
> 7. This takes us to the question as to what is meant by an error apparent on the face of record. In our opinion, when an order is passed contrary to the provisions of the statute or the judgment of the High Court or the Supreme Court, which are covered on the issue and binding on the Authorities, have not been considered or when the factual aspect had not been correctly stated, a mistake would occur on the face of record.....

9. The Apex Court in Commissioner of Central Excise, Calcutta Vs. A.S.C.U. Ltd. [(2003) 151 ELT 481] has held that a rectifiable mistake is a mistake, which is obvious and not something, which has to be established by a long drawn process of reasoning or where two opinions are possible. In our opinion, in the given case, there is no question of long drawn process to give a reason and there is no question of possibility of two opinions and equally, we find there is no debatable issue involved in this case. We may also refer to the judgment of the Supreme Court in Deva Metal Powers (P.) Ltd. Vs. Commissioner, Trade Tax, U.P. [(2008) 2 SCC 439], wherein it has been held that the only requirement for rectification is that the mistake must be a rectifiable mistake and the same must be apparent from the record. The facts of the present case also falls within the law laid down by the Apex Court in the above judgments.

10. There is one more aspect in this case and that is even when the judgment of the Courts are produced for entitlement of reduction in tax and consequent refund and when the same has not been taken into consideration, it could be termed to be a mistake apparent from the record and the same could be rectified, as has been held by the Supreme Court in Assistant Commissioner of Income Tax Vs. Saurashtra Kutch Stock Exchange Ltd. [(2008) 305 ITR 227]."

7. I had an occasion to consider an identical issue in the case of M/s.Sujana Towers Limited Vs. Assistant Commissioner (CT) [W.P.No.30304 of 2014 dated 20.11.2014] wherein an order passed by the Assessing Officer under Section 84 of the TNVAT Act, 2006 was under challenge. While considering the scope of Section 84 of the TNVAT Act, 2006, it was observed as follows :

"Section 84 of the Tamil Nadu Value Added Tax Act deals with power to rectify any error apparent on the face of the record. Sub-Section (1) states that the Assessing Authority or an

> Appellate Authority or Revisional Authority including the 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. Therefore, the power conferred under Section 84(1) on the Assessing Authority is a power to rectify any error apparent on the face of the record. It does not state that it is only pertaining to arithmetical errors or clerical errors. Though the provision states that it is a power for rectification, in effect, the language employed in the provision would confer a power on the Authority to review its decision, if there is error apparent on the face of the record."

8. Thus, the power of the first respondent under Section 84 of the TNVAT Act, 2006 is neither limited nor circumscribed as understood by the first respondent in the impugned orders. As pointed out by the Honourable Division Bench, an order passed contrary to the provisions of the statute or the judgments of the High Court or the Supreme Court, which are covered on the issue and binding on the Authorities, when not considered or when the factual aspect has not been correctly stated, a mistake would occur on the face of the record.

9. Furthermore, a rectifiable mistake is a mistake, which is obvious and not something, which has to be established by a long drawn process of reasoning or where two opinions are possible and the only requirement for rectification is that the mistake must be a rectifiable mistake and the same must be apparent on the face of the record. One more aspect, which was pointed out by the Honourable Division Bench in terms of the decision of the Honourable Supreme Court in A.C.I.T. Vs. Saurashtra Kutch Stock Exchange Ltd. [(2008) 305 ITR 227] was that when the judgments of Courts are produced for entitlement of reduction in tax and consequent refund and when the same has not been taken into consideration, it could be termed to be a mistake apparent from the records and the same could be rectified.

10. Applying the law laid down in above referred to decisions to the facts of the present case, it has to be undoubtedly held that the impugned orders do not address the real issue and that the finding rendered by the first respondent in the penultimate paragraph of the impugned orders is not legally tenable. One more error, which is

apparent on the face of the orders passed by the first respondent, is that there is no endeavour made by the third respondent to examine as to whether the error sought to be pointed out by the petitioner was an error apparent on the face of the records. However, being guided by the principle that only the arithmetical and clerical errors could be corrected, the first respondent rejected the petitions under Section 84 of the TNVAT Act, 2006. Hence, the impugned orders call for interference on this technical ground.

11. Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matters are remitted back to the first respondent for fresh consideration, who shall take into consideration the petitions filed by the petitioner under Section 84 of the TNVAT Act, 2006, examine as to whether there is any error apparent on the face of the records based on the parameters pointed out in the decisions referred to supra and after affording an opportunity of personal hearing to the petitioner, pass a reasoned order on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the above MPs are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To
1.The Assistant Commissioner-CT,
Nandambakkam Assessment Circle, No.17, II Street,
Loganathan Nagar, Choolaimedu, Chennai-94.
2.The Assistant Commissioner-CT,
Guindy Assessment Circle, Chennai-28.
3.The Joint Commissioner (Chennai-East)-CT,
PAPJM Building, Greams Road, Chennai-6.
4.The Commissioner of Commercial Taxes-TN,
Ezhilagam, Chennai-5.

+ 5 ccs to Mr.G. Vijayakumar, Advocate SR.68563 & 68108

WP.Nos.38722 to 38726/2015
& M.P.Nos.1,1,1,1 and 1/2015

KJI(CO)
EU 06.1.16