IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 2.3.2015.

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.5352 and 5353 of 2015
and
M.P.No.1 of 2015

Nagarjuna Oil Corporation Limited
(Rep by V.Parthasarathy Vice
President - Finance)
Kayalpattu Village
Poochimedu Post 608 801
Cuddalore (Taluk & District) ... Petitioner in both Wps

.vs.

The Assistant Commissioner
(Commercial Taxes)
Office of the Assistant Commissioner
Cuddalore Taluk Sub Jail Road
Cuddalore 607 001 ... Respondents in both Wps

Prayer in W.P.No.5352/2015

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records on the file of the respondent herein in TIN 33244381692/ 2011-2012 dated 17.11.2014 and quashing the same.

Prayer in W.P.No.5353/2015

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records on the file of the respondent herein in TIN 33244381691/ 2011-2012 dated 13.1.2015, quashing the same while directing the respondent herein to rectify his assessment order in

TIN 33244381691/2011-2012 dated 17.11.2014 and delete the tax demand of Rs.1,95,37,320/- and penalty under Sec. 27 (3) of the Act being Rs.26,98,595/- and penalty under Section 27 (4) of the Act being Rs.6383/-.

For Petitioner : Mr.N.Inbarajan

For Respondents : Mr.A.N.R.Jayapratap, AGP(T)

COMMON ORDER

Petitioner has come forward with the aforesaid prayer.

2. The petitioner, on receipt of notice for reversion of input tax credit, submitted a reply on 10.11.2014. The statements submitted before the inspection wing was also recorded and the same was putforth before the authority contending that the petitioners were yet to commence the commercial production and the only sales effected were sale of scrap. The respondents passed the impugned order stating that the petitioner has not submitted the reply and passed an order that they have not submitted the reply and arrived at the amount of tax payable by them. The petitioner further submitted that they paid the tax for sale of old scrap and since the objection was not considered, the petitioner made a representation on 5.12.2014 seeking for re-opening of assessment. The authority stated that the application has been rejected as the remedy is only by way of appeal and an application cannot be entertained. Further, he has treated the representation of the petitioner as the rectification petition under section 84 of the Tamil Nadu Value Added Tax Act, 2006 and passed another order which is also subject matter of these writ petitions.

3. The petitioner, drew the attention of this court to section 84 of the Act stating that he has not sought for any rectification under section 84 but, sought only for re-opening and that the factual aspects cannot be gone into under section 84 of the Act, 2006.

4. The respondent contended that even though objection was not considered, subsequently, the authority has taken into account the objection filed by the petitioner and passed an order under section 84 of the Act. It is only at the request of the petitioner, the orders dated 13.1.2015 has been passed.

5. In reply, the petitioner relied upon the decision reported in COMMISSIONER OF CENTRAL EXCISE, VADODARA V. STEELCO GUJARAT LTD. (2004 (163) ELT 403 (SC)) wherein it has been held as under:-

> "8. Although the ground for rectification, namely, an error on the fact of the record may be common to a power for review, the nature of the power to be exercised in the two cases is distinct. The power of review is not limited to rectification and is wider than the power conferred under Section 35C(2). We are unable to hold that the error was a manifest one which could admit of no dispute. It was a debatable point which was raised, and the conclusion of the Tribunal in the impugned order clearly shows that it has considered the question from the point of view of the sufficiency of the material to justify the demand raised. In the circumstances of the case we allow the appeals and set aside the impugned order of the Tribunal. We are told that the respondent has in the meanwhile filed a reference application under Sec.35G of the Act before the Tribunal. In view of our order, the Tribunal can now hear and dispose of that application as expeditiously as is conveniently possible. ..."

6. In the above decision, similar provision to section 84 was considered by the Honourable Apex Court under CESTAT Act. Admittedly, the authority cannot go into the factual aspects of the matter. Hence, the authority has become functus officio and he cannot pass another order taking into account the objection filed by the petitioner. That apart, the petitioner has also not sought for any rectification under section 84 of the Act. Therefore, the contention of the respondent cannot be accepted. Even assuming for the sake of argument, the authority is empowered to pass order under section 84 of the Act taking into factual aspects, it should also be done in terms of section 84 of the Act and opportunity should be given to the petitioner and admittedly, that has not been given. Firstly, section 84 of the Act is not applicable to the facts of this case as the petitioner has not sought for any rectification under section 84 of the Act. Admittedly, the authority has become functus officio and in the original order, even though objections have been filed, it has been recorded that the petitioner has not filed any objection. The authority has also stated that the petitioner has got an appeal remedy and rendered a finding on the petition filed by the petitioner.

7. For the aforesaid reasons, the impugned orders are remitted to the original authority to consider the case afresh and pass orders on merits and in accordance with law. The petitioner shall appear before the authority on 23.3.2015. The writ petitions are disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssk.

To

The Assistant Commissioner
(Commercial Taxes)
Office of the Assistant Commissioner
Cuddalore Taluk Sub Jail Road
Cuddalore 607 001

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.11383
+1cc to the Special Government Pleader, S.R.No.11447

W.P.Nos.5352 and 5353 of 2015

AK(CO)
CA(20/03/2015)