IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.5904 of 2015
And
M.P.No.1 of 2015

Tvl.Sabarai Alloys Metals India (P) Ltd. [Petitioner]
Rep. by its Manager R.Elango
A3 SIPCOT Industrial Estate
Gummidipoondi-601 201.

Vs

The Assistant Commissioner (CT
Ponneri Assessment Circle
No.21 New Kutchery Road
Ponneri-601 204. [Respondent]

Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus directing the respondent to rectify the order passed in CST 797685-2011-12 dated 03.12.2014 by considering the petition dated 24.01.2015 pending on the file of the respondent in accordance with law.

For Petitioner : Mr.A.Thiagarajan, Senior Counsel
for Mr.S.Ramesh Kumar

For Respondent : Mr.Cibi Vishnu, AGP (T)

O R D E R

Heard Mr.A.Thiagarajan, learned Senior Counsel for the petitioner and Mr.Cibi Vishnu, learned Additional Government Pleader (Taxes), who accepts notice for the respondent. With the consent of the learned counsel for either side, the main writ petition itself is taken up for hearing at the admission stage itself.

2. The petitioner has come forward with this writ petition for the issue of a Writ of mandamus directing the respondent to rectify the order passed in CST 797685-2011-12 dated 03.12.2014, by considering his petition dated 24.01.2015, in accordance with law.

3. The case of the petitioner is that for the notice dated 22.08.2013, proposing to impose higher rate of tax at 14.5% on the ground that the petitioner has not filed 'C' forms, the petitioner sent a reply on 03.09.2013 stating that 'C' forms are very much available on the file of the respondent. He has also enclosed the chart showing the details of 'C' forms and requested 30 days time to collect the balance 'C' forms. However, the respondent has passed the assessment order on 03.12.2014, as if the petitioner has not filed 'C' forms. According to the petitioner, having received the list of 'C' forms, the respondent is not justified in passing the impugned order. Further, according to the petitioner, as balanced 'C' forms were not available and on receipt of the same, the petitioner enclosed the said copies of the 'C' forms along with a rectification petition on 24.01.2015. But, according to the petitioner, the same was not accepted, however, received a notice dated 06.02.2015 to pay the arrears of sales tax amounting to Rs.87,18,674/- further informing that if they did not pay the amount, the Bank account would be attached apart from other stringent conditions. Aggrieved against the same, the petitioner has filed this writ petition.

4. The learned counsel for the petitioner submitted that when a petition under Section 84 of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as "the 2006 Act") , is filed, the respondent ought to have considered the same, but without doing so, issuing notice to pay arrears of tax is unsustainable.

5. The learned Additional Government Pleader (Taxes) on the other hand submitted that the assessment order has been passed as early as 03.12.2014 and the petitioner did not file 'C' forms for more than a year and hence, at this distance of time, he cannot raise the issue.

6. For the sake of convenience Section 84 of the Act is extracted below:-

> "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 and 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".

7. From a perusal of Section 84 of the Act, it is very clear that the assessee is at liberty to file a petition for rectification and the authority may consider the same and pass orders within 5 years and hence the authority ought to have considered the same and passed orders on merits and in accordance with law.

8. In view of the above, the respondent is directed to dispose of the rectification petition filed by the petitioner under Section 84 of the 2006 Act dated 24.01.2015, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order, after affording an opportunity of personal hearing to the petitioner. It is made clear that till the petition filed by the petitioner for rectification dated 24.01.2015 is decided, the respondent is directed not to invoke coercive action against the petitioner.

The writ petition is disposed of with the above direction. No costs. Connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

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To

The Assistant Commissioner (CT
Ponneri Assessment Circle
No.21 New Kutchery Road
Ponneri-601 204.

1 cc to Spl.Government Pleader (T), sr. 13057
1 cc to Mr.S. Ramesh Kumar, Sr. 12498

W.P.5904 of 2015

RV (CO)
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