IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29908 of 2015

M/s.Malladi Specialities Limited,
Rep. By its Managing Director,
Mr.V.V.Raghupathi Rao,
No.9, GST Road, St.Thomas Mount,
Chennai - 600 016. ... Petitioner

Vs.

1. Assistant Commissioner-CT,
   Medavakkam Assessment Circle,
   26-D, BHEL Nagar, 4th Main Road,
   8th Cross Street, Medavakkam,
   Chennai - 600 100.

2. Assistant Commissioner - CT,
   Nandambakkam Assessment Circle,
   No.17, Second Street,
   Loganathan Nagar,
   Choolaimedu, Chennai - 94. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorari to call for the records of the impugned order in CST/717489/2013-2014, dated 26.08.2015 passed by the second respondent and quash the same as illegal and arbitrary.

For Petitioner : Mr.N.Senthil Kumar

For Respondents : Mr.V.Haribabu,
Additional Government Pleader

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ORDER

Heard Mr.N.Senthil Kumar, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader for the respondents and with their consent, the writ petition is taken up for final disposal.

2. The petitioner has filed this writ petition praying for issuance of a writ of certiorari to quash the impugned order dated 26.08.2015 under the provisions of the Central Sales Tax Act, 1956, for the year 2013-2014.

3. The only issue is with regard to the defective 'C' forms. Though the officer had returned the defective 'C' forms for rectification, when represented after rectification, the authority refused to accept the same and accordingly, in exercise of the powers conferred on him under Section 9(2) of the CST Act read with Section 84 of the TNVAT Act, 2006, the impugned order has been passed.

4. Learned counsel for the petitioner pointed out that in respect of the same assessee, in some what an identical order, this Court has considered the validity of the order in W.P.Nos.38722 to 38726 of 2015, dated 17.12.2015, whereby the scope of Section 84 was considered and certain directions were issued.

5. At this juncture, it is useful to refer to the relevant portion of the said judgment and paragraphs 7 to 11 thereof are extracted below:

> “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

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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

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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."

6. Learned Additional Government Pleader appearing for the respondents, on instruction, submitted that the respondent will consider the 'C' forms submitted by the petitioner and redo the entire exercise.

7. In the light of the above, the writ petition is allowed and the impugned order is set aside and the matter is remanded back to the respondent for fresh consideration, who shall receive the 'C' forms ***as well as the other documents such as Export Documents etc.**, from the petitioner and proceed to pass fresh orders on merits and in accordance with law. No Costs. M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CS IV)
dt.5.8.16

***Modified as per order dt.1.9.16**
made in WMP.26503/16
Sd/-
Assistant Registrar
dt.8.9.16

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner-CT,
   Medavakkam Assessment Circle,
   26-D, BHEL Nagar, 4th Main Road,
   8th Cross Street, Medavakkam,
   Chennai - 600 100.

***To be substituted to the order already despatched on 30.8.16.**

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

+1cc to Mr.G.Vijayakumar, Advocate, S.R.No.41376
+1cc to the Special Government Pleader, S.R.No.41506
***1 cc to Mr.G.Vijayakumar, advocate,sr.49736 (9/9)**

W.P.No.29908 of 2015

PVS(CO)
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