IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.34093 to 34102 of 2016 &
WMPs 29427 to 29436 of 2016

W.P.No.34093 of 2016

M/s Reinforced Earth India Limited
rep. by Mr.Deepak Saklani,
Deputy Manager-Finance and Accounts-Taxation
.. Petitioner in all WPs

vs.

1.The Joint Commissioner (CT)
Chennai (South) Division,
PAPJM Buildings, Greams Road
Chennai 600 006.

2.The Assistant Commissioner (CT)
Alandur Assessment Circle
Chennai. .. Respondents in all WPs

PRAYER : Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, to call for the impugned proceedings of the first respondent in R.P.No.35/2014 to 39/2014, and 48 to 52/2014 respectively dated 23.02.2015 and quash the same as illegal, contrary to law and opposed to the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.K.Venkatesh
Govt. Advocate (Taxes)

C O M M O N O R D E R

Heard Mr.P.Rajkumar, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate (Taxes) appearing for the respondents. Since the issue involved in all these Writ Petitions lies in a very narrow compass, the Writ Petitions themselves are taken up for disposal.

2.The petitioner who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act] and also under the Central Sales Tax Act, 1956 [CST Act], is involved in executing projects for construction of Reinforced Earth Walls for the approach roads leading to bridges and flyovers. These Writ Petitions have been filed challenging the orders passed by the first respondent, Revisional Authority, rejecting the Revision Petitions filed by the petitioner in R.P.Nos.35, 36, 37, 38 & 39 of 2014 and 48, 49, 50, 51 and 52 of 2014.

3.The first set of Revision Petitions were filed by the petitioner challenging the orders passed by the Assessing Officer namely the second respondent dated 19.02.2014, rejecting the petitioner's Rectification Applications under section 84 of TNVAT Act, in respect of the relevant assessment years. The second set of Revision Petitions were filed challenging the orders passed by the Assessing Officer, demanding interest under section 42 of the TNVAT Act.

4.The undisputed facts are that the petitioner filed the monthly returns for the relevant assessment years viz. 2006-2007 to 2010-2011, and paid tax at the rate of 2%. The said returns were taken on file and orders of assessment were passed on 25.05.2011/06.07.2011 under section 22(2) of the TNVAT Act. Subsequently, inspection was conducted in the business premises of the petitioner between 22.06.2012 and 29.06.2012, pursuant to which the second respondent issued notices, proposing to reopen the assessments made under section 22(2) of the TNVAT Act, stating that the petitioner was assessed to tax at 2% under section 6 of the TNVAT Act. However, the materials collected during the inspections show that they are not eligible to opt for payment of tax at compounded rate under section 6 of the TNVAT Act and therefore, the option for payment of tax at compounded rate for all the assessment years were proposed to be disallowed and levied tax at the appropriate rate under section 5 of the TNVAT Act. The petitioner filed their objections to the Revision Notices and the second respondent completed the assessments, gave credit to the tax paid, but demanded interest, by confirming the proposal as set out in the pre-revision notices.

5.Soon after the petitioner filed Writ Petitions before this Court in W.P.Nos.13626 to 13630 of 2013, challenging the Revision of Assessment for all assessment years, only with regard to the levy of interest, as entire tax had been paid as proposed in the pre-revision notices. The said Writ Petitions were disposed of by a common order dated 26.06.2013, giving liberty to the petitioner to file Revisions before the appropriate authorities under section 54 of the Act, within a time frame, with a direction to the Revisional Authority to entertain the Revision Petitions, to be disposed of on merits. The recovery proceedings for recovering interest was directed to be kept in abeyance, for a period of 15 days to enable the petitioner to file revisions and obtain interim orders from the Revisional Authority. In terms of the directions issued, the petitioner filed Revision Applications before the first respondent on 08.07.2013, for all assessment years. In those Revision Applications, the petitioner contested the claim for interest and stated that it was not sustainable in the light of the decision of the Hon'ble Supreme Court in the case of E.I.D.PARRY (INDIA) LTD., v ASSISTANT COMMISSIONER OF COMMERCIAL TAXES, CHENNAI [141 STC 12].

6.In the meantime, the second respondent attached the petitioner's Bank Account, by notice dated 24.01.2014 and recovered a sum of Rs.34,59,503/-, being tax as well as interest. Thereafter, the petitioner filed Rectification Petitions under section 84 of the TNVAT Act, before the second respondent for all the assessment years dated 18.02.2014. Those Rectification Petitions have been rejected by identical orders, all dated 19.02.2014, stating that the objections filed by the petitioner to the pre-revision notices were duly dealt with and orders of revision have been passed and there is no mistake apparent on the face of the records warranting any revision under section 84 of the TNVAT Act. Challenging, those orders, the petitioner filed Revision Petitions, before the first respondent on 05.03.2014.

7.While the matters were pending before the first respondent, the second respondent issued separate notices dated 18.03.2014, for all the assessment years, proposing to levy penalty. The petitioner has filed objections on 19.05.2014, and no orders have been passed till date. It is seen that the Revision Petitions were filed by the petitioner through their Counsel Mr.S.P.Asokan, and due to his ill health, he did not appear before the first respondent, consequently, the first respondent passed exparte orders on all the ten Revision Petitions and dismissed the same.

8.Though the impugned orders are exparte orders, the first respondent has given certain brief reasons for rejecting the Revision Petitions. In so far as the Revision Petitions filed against the rejection of Rectification Petitions under section 84 of the TNVAT Act, are concerned, the only reason stated was that those petitions were filed after a lapse of eleven months, which was not accepted. In so far as the rejection of the Revision Petitions filed challenging the orders levying interest, the only reason stated by the first respondent was that the dealer was paying tax under section 6 of the TNVAT Act, violating the conditions therein and the assessment was reversed and the dealer was directed to pay tax under section 5 of the TNVAT Act and hence the Assessing Officer levied interest under section 42(4) of the TNVAT Act and the levy of interest was well within the provisions of the TNVAT Act and therefore, there was no reason to set aside the levy of interest.

9.After elaborately, hearing the learned counsel for the parties and carefully perusing the materials placed on record, the fact that when the first respondent chose to decide the matter exparte, he would have refrained from expressing anything on the merits of the contentions raised in the Revision Petitions. Nevertheless, the first respondent has given a brief reason for rejecting both the sets of Revision Petitions. In the Petitions filed under section 84 of the TNVAT Act before the second respondent, the petitioner has raised several ground. In other words, the petitioner has pointed out the arrears in the sales figures as noted by the Enforcement Wing Officials during their inspection and it was pointed out that the sales figures adopted in the assessment orders were different from the sales figures arrived at by the Enforcement Wing Officials and the difference were pointed out in a tabulated statement. Further, it was pointed out that the total of the Taxable Turnover evidenced by the accounts of the petitioner-company is more than the Taxable Turnovers arrived at by Enforcement Wing Officials and hence the same has to be adopted and that the Taxable Turnover adopted in the revised assessment orders do not match either with the figures arrived at by the Enforcement Wing Officials or the figures disclosed in the Accounts of the petitioner-company. Therefore, it was pointed out that there was an error apparent on the face of the records. Further, the petitioner also raised a contention as to how the interest is not leviable under section 42 of the TNVAT Act, apart from relying upon the decision of the Hon'ble Supreme Court. Therefore, the petitioner requested for revision of assessments.

10.However, the second respondent while considering the Petitions filed under section 84 of the TNVAT Act, in a most cryptic manner, rejected the same, rather than it is a one line order holding that there is no mistake apparent on the face of the record warranting any revision under section 84 of the TNVAT Act. The power given to the Assessing Officer under section 84 of the TNVAT Act, is a power to be exercised in accordance with law and merely stating that there is no mistake apparent on the face of the record, would not be sufficient, especially when the petitioner points out that there are difference in the figures leading to a wrong calculation of the Taxable Turnover. Therefore, the least that the second respondent is expected to do is to examine as to whether the factual discrepancy pointed by the petitioner is correct, if in the opinion of the second respondent, the same is incorrect, then he should record reasons as to why he has come to a conclusion that it is incorrect. Those basic requirements are absent in the orders passed by the second respondent.

11.Therefore, the petitioner rightly preferred Revision Petitions as against those orders. In the Revision Petitions, the petitioner has raised several grounds. However, the Revisional Authority while taking an exparte decision, rejected the Revision Petitions only on the ground that the Rectification Applications were filed before the second respondent, eleven months after the assessments were completed. That cannot hardly be a reason to reject the Revision Petitions, since there is no limitation provided under the Act for filing a Revision Petition under section 84 of the TNVAT Act. However, for some valid reasons, the Revisional Authority found that the dealer had adopted dilatory tactics with mala fide intentions, then it would have been a different matter. However, there is no such findings on the aspect of delay. Therefore, the rejection of the Revision Petitions holding that the Petitions for Rectification filed under section 84 of the TNVAT Act, after a period of eleven months, cannot hardly be sustained.

12.Coming to the next set of impugned orders regarding the levy of interest, as pointed out earlier, the Court in W.P.Nos.13626 to 13630 of 2013, directed the Revision Petitions to be entertained by the concerned authority and should be disposed of on merits. It is no doubt true that the petitioner was not represented by his Counsel. If that be so, then the Revision Petitions should be dismissed for default, but the authority chose to give brief reasons for rejection. The reasons do not deal with the factual position nor deal with the contentions raised by the petitioner by placing reliance on the decision of the Hon'ble Supreme Court in the case of E.I.D.PARRY (INDIA) LTD.,(supra). The facts of the case have not been taken note of. Therefore, the orders rejecting the Revision Petitions with regard to levy of interest is held to be a non-speaking order.

13.Having come to the above conclusion that the resultant order that should follow is to interfere with the impugned orders and to remit the same to the first respondent for fresh consideration. However, it is seen that since the matter has been prolonging for a long period of time and the balance amount of interest payable is Rs.27,14,101/-, this Court is inclined to impose some conditions on the petitioner to be entitled to one more opportunity to go before the Revisional Authority.

14.Accordingly, the Writ Petitions are allowed, the impugned orders passed by the first respondent are set aside and the matter is remanded to the first respondent for fresh consideration. However, this is subject to the condition that the petitioner pays Rs.4,00,000/- (Rupees four lakhs only) to the second respondent, towards the disputed interest, within a period of three weeks. If the petitioner complies with the condition, the petitioner is entitled to one more opportunity to appear before the first respondent and putforth their submissions. If the petitioner fails to comply with the conditional order, then the first respondent is empowered to reject the Revision Petitions for default. On the other hand, if the petitioner complies with the condition, then the first respondent shall issue notice of personal hearing, hear the parties, consider the submissions made in both the sets of Revision Petitions and take a decision in accordance with law and pass a speaking order. In the light of the above direction, subject to the compliance of the conditional order, the demand for remaining amount of interest is stayed, till the disposal of the Revision Petitions. NO costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Joint Commissioner (CT)
Chennai (South) Division,
PAPJM Buildings, Greams Road
Chennai 600 006.

2.The Assistant Commissioner (CT)
Alandur Assessment Circle
Chennai.

+1cc to Mr.P.Rajkumar, Advocate Sr.55278
+1cc to the Special Government pleader sr.55650

W.P.Nos.34093 to 34102 of 2016

gj ii[co]
srg 25/10/2016