IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.07.2017

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THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.22018 of 2009

M/s.Kamak Plastics (P) Limited,
Represented by Mr.V.Nilakantan,
Managing Director,
Earlier at 12A, Industrial Estate,
Chennai-32, Now at
86, VOC Street, Chinna colony,
Athipet, Chennai -58. .. Petitioner

Vs

1. The Sales Tax Appellate Tribunal,
   (Main Bench), City Civil Court Buildings,
   Chennai-104.

2. The Commercial tax officer (Addl.),
   Guindy assessment circle,
   46, Greenways road,
   Chennai-28. ... Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records on the files of the 1st respondent in T.M.P.No.141/2008 in T.A.No.183/2003 dated 11.6.2009 and quash the same as being invalid and illegal.

For Petitioner : Mr.V.Srikanth

For Respondents : Mr.K.Venkatesh,
Government Advocate for R2.

ORDER

Heard Mr.V.Srikanth, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the second respondent.

2. The short but interesting issue, which arises for consideration in this case is as to how an application under Section 55 of the Tamil Nadu General Sales Tax Act,1959, (TNGST Act) should be considered by the first respondent or that matter, the Assessing Officer or the Appellate Authority.

3. Before I proceed to go into the relevant facts of this case, it is necessary to invoke the scope and power exercisable under Section 55 of the Act. The said provision reads as follows:-

> Section 55 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 a reasonable opportunity of being heard.
> Section 55(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.
> Section 55(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 the thereupon the provisions of this Act and the rules made thereunder shall apply as if such notice had been given in the first instance.
> Section 55(3-A) 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.
> Section 55(4) The provisions of this Act relating to appeal and revision shall apply to an order of rectification made under this section as they apply to the order in respect of which such order of rectification has been made.

4. The exercise of power under sub-section (1) of Section 55 by any one of the authorities mentioned therein is required to be done within a time frame, i.e., five years from the date on which the order was passed. What can be rectified by exercise of jurisdiction under Section 55 is any error apparent on the face of the record. The Courts have held that the errors apparent on the face of the records are not errors, which can be established only by a long drawn process of reasoning or is a

debatable point of law. Therefore, what can be rectified is such error, which is so apparent on the very face of the record and it is a wonder, how it had crept in and it could have been avoided even the first place. Errors which are not rectifiable are more, which are not obvious, not glaring, not self evident, but requires, detailed investigation into the facts and arguments in law. Therefore, if the correction of the mistake on any one of the above grounds is not permissible, then the only remedy available for the aggrieved person is to prefer an appeal or a revision under the provisions of the Act.

5. Bearing this legal principle in mind, if the case on hand is examined, it is seen that the first respondent had disposed of the petitioner's appeal in T.A.No.183 of 2003, by order dated 02.05.2007. The Revenue did not prefer any tax case revision against the order before this Court. The first respondent while passing the order, dated 02.05.2007, held that admittedly, the taxable turnover for the assessment year 1996-97 upto 31.07.1996, was shown only for Rs.44,36,719/-, so the rate of tax can be considered only upto the period 31.06.1996 and not for the whole year. Therefore, the first respondent was of the view that for the period upto 31.07.1996, (prior to assessment), the tax has to be levied at 1.5% and not at 2% for that period, the turnover does not exceed more than Rs.1,00,00,000/-. Therefore, it held that the turnover relating to the period from 01.04.1996 to 31.07.1996, for which additional tax is levied only at 1.5% on the turnover of Rs.44,36,716/-.

6. The petitioner filed an application for rectification stating that the first respondent has held that additional sales tax can be levied at 1.5% of Rs.44,36,719/- and during the period from 01.04.1996 to 31.07.1996, if the taxable turnover did not exceed Rs.1,00,00,000/- additional tax is leviable at 1.5% on the taxable turnover after granting a deduction of Rs.10,00,000/- from the taxable turnover.

7. In other words, it was contended that the additional sales tax is leviable at 1.5% on Rs.44,36,719/-, after granting a deduction of Rs.10,00,000/- as per the provisions of the Additional Sales Tax Act. It was stated that this position was not considered by the first respondent, while passing the modified order and therefore, requested for revising the order by exercising power under Section 55 of the Act.

8. Thus, the first respondent was required to consider only whether there was an error apparent on the face of the record and the error pointed out by the petitioner was not an error apparent on the face of the record. Unfortunately, the first respondent proceeded to re-examine the entire matter and opined that the earlier order, dated 02.05.2007, was not tenable, but

thought fit to make an observation that they at this stage, cannot go into the merits of the case.

9. A reading of the impugned order would show that the first respondent had very serious reservations about the order passed by the first respondent dated 02.05.2007. However, the first respondent, while exercising its jurisdiction under Section 55 of the Act cannot act as an appellate authority or a reviewing authority over the earlier order and the power is confined only to see whether the order requires a rectification. Thus, without noting this subtle, but very important legal distinction, the first respondent has made certain observations and did not go into the specific aspect raised by the petitioner with reference to the provision of the Additional Sales Tax Act. Therefore, the order passed by the first respondent calls for interference.

10. Accordingly, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the first respondent for fresh consideration, who shall take note of the observations made in this order and proceed to decide the petition for rectification under Section 55 of the Act. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Sales Tax Appellate Tribunal,
   (Main Bench), City Civil Court Buildings,
   Chennai-104.

2. The Commercial tax officer (Addl.),
   Guindy assessment circle,
   46, Greenways road,
   Chennai-28.

+1cc to Mr.K.Venkatesh,, Advocate, S.R.No.50562

W.P.No.22018 of 2009

SVI(CO)
CS/09/08/17