IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13887 of 2009 and
M.P.Nos.1 & 2 of 2009

Rain Industries Limited,
rep. by its Chief General Manager,
G.N.V.S.R.R.Kumar,
Vinayaga Complex 1st Floor,
Bangalore Road, Hosur. ... Petitioner

Vs.

Assistant Commissioner (CT) (FAC),
Hosur (North), Hosur. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records on the files of the respondent herein in TNGST : 3321990/2005-06 dated 13.04.2009 and quash the same.

For Petitioner : Mr.N.Inbarajan

For Respondents : Mr.K.Venkatesh,
Government Advocate

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O R D E R

Heard Mr.N.Inbarajan, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent.

2. The petitioner has filed this writ petition challenging an order passed by the respondent dated 13.04.2009, in exercise of his power under Section 55 of the Tamil Nadu General Sales Tax Act, 1959, (hereinafter referred as "the TNGST Act"), thereby rectifying the order of assessment passed on 31.05.2006, for the assessment year 2005-06 under the TNGST Act. The petitioner filed their monthly returns for the assessment year 2005-06 and their accounts were called for and checked and

the turnover, which was reported by the petitioner was accepted. The petitioner was assessed to the total and taxable turnover of Rs.61,84,45,150/- and Rs.56,67,49,693/- respectively. Accordingly, the respondent calculated the rate of tax and on the turnover of Rs.39,73,78,216/-, levied tax at the rate of 16% and on the turnover of Rs.16,93,71,477/-, levied tax at the rate of 14%.

3. With regard to the additional sales tax, the respondent had initially adopted the rate of tax at 1.5% on the taxable turnover by bringing the petitioner's case under Section 2(1)(aa)(i-a) of the TNGST Act in view of the notification issued by the Government in G.O.Ms.No.04, Commercial Taxes (B2), dated 02.01.2006. After the assessment was completed, the respondent issued notice stating that the taxable turnover for the year has to be taken into account for adopting the rates of tax and accordingly, the taxable turnover of the dealer for the year 2005-06 was Rs.56,67,49,693/- and so the additional tax should be collected at 2% and has to be worked out upto 02.01.2006. Therefore, the respondent afforded an opportunity to the petitioner to file their objections. The petitioner filed their objections stating that the total turnover should be taken into account for the said period during which no additional sales tax is leviable and such a matter cannot be a subject matter of rectification under Section 55 of the TNGST Act. The objections were considered by the respondent and were rejected by the impugned order.

4. Two issues arise for consideration in the instant case are whether the subject issue is an error, which could be rectified by the assessing officer invoking Section 55 of the TNGST Act and as to how the taxable turnover has to be computed.

5. On the first question, Section 55 of the TNGST Act deals with the power of an assessing officer or an appellate or revising authority (including the appellate tribunal) to rectify any error apparent on the face of the record. Proviso to Section 55(1) of the TNGST Act states 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 being heard. Thus, the statute has contemplated enhancement of assessment or penalty consequent upon exercise of power under Section 55(1) of the TNGST Act. Therefore, it cannot be stated that the power under Section 55 of the TNGST Act can be exercised only for the purpose of rectifying clerical mistakes or typographical mistakes. In the instant case, the mistake sought to be rectified is as to how the taxable turnover has to be computed. This undoubtedly is well within the jurisdiction of the power exercisable by the assessing officer under Section 55 of the

TNGST Act. Thus, the respondent was justified in examining his power under Section 55 of the TNGST Act.

6. With regard to the second issue, the respondent has rightly held that the turnover has to be fixed for the whole of the year and the year means the financial year as defined under Section 2(t) of the TNGST Act.

7. The Hon'ble Division Bench of this Court in the case of HSI Automotives Limited, vs. The State of Tamil Nadu reported in 2015-5-L.W.235, has held that under the Tamil Nadu Additional Sales Tax Act, 1970, (hereinafter referred as “the TNAST Act”) taxable turnover has not been defined and the operation of the said TNAST Act, depends upon the working of the TNGST Act and the expression 'taxable turnover' appearing in the TNAST Act would also have to be understood only in the same sense in which it is used in the TNGST Act, both in view of the fact that the TNAST Act does not define taxable turnover and also in view of the fact that the provisions of the TNGST Act (including the definition part) are made applicable to the TNAST Act by virtue of Section 2(1)(b) of the TNAST Act. Thus, the respondent has rightly held that the taxable turnover should be the taxable turnover of Rs.56,67,49,693/- and the respondent has rightly rectified the error, which is apparent on the face of the record.

8. Thus, this Court finds the impugned order to be just and proper and does not call for interference. In the result, this writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

abr
To

Assistant Commissioner (CT) (FAC),
Hosur (North), Hosur.

+1cc to the Government Pleader, S.R.No. 87504
+1cc to Mr.N.INBARAJAN Advocate, S.R.No. 86706

W.P.No.13887 of 2009

VGII(CO)

TR(02/01/2018)