IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19/4/2018
C O R A M
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No.720 of 2018

M/s. Om Sai Intex Pvt Ltd
rep. by its Director - V. Venkatesh
No.140 Perumpulimedu Village
Cheyyar Taluk
Tiruvannamalai District 604 410. ... Appellant/Petitioner

Vs

The Commercial Tax Officer
Vandavasi
Tiruvannamalai District. ... Respondent/Respondent

Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.362 of 2015, dated 26/2/2015.

Prayer in WP.No.362/2015:Writ petition filed under Article 226 of India seeking issuance of a writ of certiorarified calling for the records on the file of the Respondent in its impugned proceedings made in TIN No.33494602472/2013-2014 dated 21.11.2014 quash the same which is contrary to the provisions of Section 19(10)(a) of TNVAT Act 2006 and Rule 10(2) of TNVAT Rules 2007.

For appellant ... Mr.S.Rajasekar

For respondent ... Mr.V.Haribabu
Additional Government Pleader
(Taxes)

J U D G M E N T

(Judgment of the Court was made by S.MANIKUMAR, J)

Material on record discloses that Commercial Tax Officer, Vandavasi, issued a pre-assessment notice, dated 19/6/2014, as hereunder:-

> "You are register dealer in the Commercial Tax Officer, Vandavasi with TIN:33964602359 respectively.
> On verification made through the Department website, it is revealed that you have claimed wrong availment of ITC as enclosed in the dealer details.
> In this connection you have wrongly

claimed ITC Rs.88,19,942/- instead of Rs.16,73,887/- for the year 2013-14. Hence you are requested to pay the difference amount of Rs.71,46,054/- within 15 days receipt of this notice.

Penalty and other proviso will be considered at the time of final assessment.

Objection if any, you may filed document evidences on you claim before me within 15 days of any working days in this office, on receipt of this notice, failing which the final assessment will be passed under TNVAT Act, 2006."

2.Om sai Index Pvt Ltd., Cheyyar, submitted their objections, dated 29/9/2014. Not satisfied with the same, Commercial Tax Officer, Vandavasi, passed an order, under Section 27 of the TNVAT Act, 2006, dated 21/11/2014.

3. Being aggrieved, petitioner has challenged the revision order, in W.P.No.362 of 2015, inter alia contended that the same was contrary to the provisions, under Section 19 (1) (a) of TANVAT Act, 2006 and Rule 10 (2) of TNVAT Rules, 2007.

4. Adverting to the above, writ Court, in W.P.No.362 of 2015, dated 26/2/2015, ordered as hereunder:-

"3. From the narration of events above, it is clear that it is a case for rectification and the petitioner will have to file a petition under Section 84 of the Act and the writ petition is not a remedy. The contention of the petitioner that Section 84 can be used only for correcting arithmetical errors alone is not correct and if there are any errors apparent on the fact of the record, the authority concerned is empowered to rectify the same.

4. In view of the above, I am not inclined to grant the relief sought for by the petitioner and it is open to the petitioner to approach the authority concerned by filing a petition under Section 84, if so advised. The writ petition is disposed of accordingly. No costs."

5. Being aggrieved, instant writ appeal has been filed, on the following grounds:

(i). When the appellant has furnished the registration number of both the purchaser and supplier, the original invoice and thus the initial burden has been discharged, by production of sale bill and other information, such as registration certificate number under TNVAT Act, etc., of the selling dealer, if at all there is any doubt, on the veracity of the transaction, it is always open to the Department to verify the accounts of the selling dealers to find out the correctness of the transaction, and the respondent has power to do so under Section 81 of the TNVAT Act.

(ii). Respondent has not followed the observations made in the judgment rendered in W.A.No.787 of 2008, dated 24/9/2008.

(iii). When the assessment is made by the authority is a clear abuse of process of law, the assessment ought not to be sustained in law and liable to be set aside.

(iv). The requirement of movement of goods, as demanded by the respondent is ex-facie illegal and wholly without jurisdiction, as the scheme of the Act under Section 19 (10) (a) does not mandate the same.

(v). Respondent has not followed Section 22 of TNVAT Act, 2006, for the purpose of making a deemed assessment for the year, on the 31st day of October of the succeeding year. In the case of the appellant, the respondent, without passing a deemed assessment, under Section 22 of the TNVAT Act, 2006, has straightaway passed proceedings, under Section 27 of the Act, which is arbitrary and ex-facie illegal.

6. On the above grounds, Mr.V.Haribabu, learned Additional Government Pleader (Taxes) submitted that pre-revision order, passed under Section 27 of the TNVAT Act, is appealable. Facts have to be adjudged only by the appellate authority. Though grounds have been raised to quash the assessment order, Mr.S.Rajasekar, learned counsel for the appellant fairly admitted that order impugned in the writ petition is appealable. Submission is placed on record.

7. Heard the learned counsel appearing for both parties.

8. Section 84 of the Value Added Tax, 2006, is extracted hereunder:-

> "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.

9. Rule 10 (2) of the Tamil Nadu Value Added Tax Rules, 2007, reads as follows:-

Every registered dealer who claims input tax credit under sub-section (1) of Section 19 shall, produce the original tax invoice, in support of his claim of the input tax credit, containing the following details, namely:-

(a). A consecutive serial number

(b). The date on which the invoice is issued

(c). The name, address and the taxpayer identification number of the seller.

(d). The name, address and the taxpayer identification number of the buyer.

(e). The description of the goods.

(f). The quantity or volume of the goods

(g). The value of the goods

(h). The rate and amount of tax charged; and

(i). The total value of the goods.

10. Section 19 (10) (a) of the Tamil Nadu Value Added Tax Act, 2006, reads thus:-

"The registered dealer shall not claim input tax credit until the dealer receives an original tax invoice duty filled, signed and issued by a registered dealer from whom the goods are purchased, containing such particulars, as may be prescribed, of the sale evidencing the amount of input tax."

11. Having regard to the submissions of both counsel that pre-revision order, under Section 27 of the VAT Act, is appealable, and when the matter requires adjudication, Section 84 of TANVAT Act, which confers power on the assessing authority, to rectify any error apparent on the face of the Court, cannot be invoked. Filing of an appeal is the only alternate and efficacious remedy.

12. Having regard to the statutory provisions, and the submission of both the learned counsel for the parties, order impugned, in W.P.No.362 of 2015, dated 26/2/2015, directing the appellant, to file rectification petition, under Section 84 of the VACT Act, requires to be set aside and accordingly set aside.

13. In the result, Writ Appeal is allowed. Appellant is granted time, to file a statutory appeal, to the competent authority, within two weeks, from the date of receipt of a copy of this order. Proceedings were pending on the file of this Court. Therefore, appeal, if any preferred within the period, as directed, shall be processed and taken on record, without insisting on limitation. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(cS VIII)

//True Copy//

Sub Assistant Registrar

mvs.

To

The Commercial Tax Officer
Vandavasi
Tiruvannamalai District.

+1cc to Special Government Pleader Sr.No.30436
+1cc to Mr.R.Hemalatha Advocate Sr.no.29847/2018

SSV(CO)
sm:18.5.2018