o IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.6421 of 2008

M/s.India Pistons Limited,
Huzur Gardens, Sembium,
Chennai - 600 011. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Fast Track Assessment Circle-III,
PAPJM Building, Greams Road,
Chennai - 600 006. ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in his proceedings RC.1330/06/A3 and quash the proceedings dated 23.01.2008, and further direct the respondent to refund to the petitioner a sum of Rs.2,83,222/- or, in the alternative, to transfer the said amount to the C.T.O., Perambur-I Assessment Circle.

For Petitioner : Mr.K.J.Chandran

For Respondent : Mr.V.Haribabu
Special Government Pleader



O R D E R

This writ petition has been filed to call for the records of the respondent in his proceedings RC.1330/06/A3 and quash the proceedings dated 23.01.2008, and further direct the respondent to refund to the petitioner a sum of Rs.2,83,222/- or, in the alternative, to transfer the said amount to the C.T.O., Perambur-I Assessment Circle.

2. The case of the petitioner namely M/s.India Pistons Limited, who is the registered dealer on the file of the Assistant Commissioner (CT), Fast Track Assessment Circle-III,

Chennai, is that towards the balance amount of tax payable as per the proceedings of the respondent in Ref. TNGST.No.1040010/96-97 dated 19.10.2001, it had paid a sum of Rs.2,38,992/- by way of cheque bearing No.076734 dated 06.12.2001. The petitioner would contend that an excess amount of Rs.1,94,039/- was available in TNGST:1994-95 and Rs.44,953/- was available in CST:1976-77 totalling an amount of Rs.2,38,992/-, which was adjusted by the respondent without any advice to the petitioner, which resulted in excess payment of Rs.2,38,992/-. Again a sum of Rs.44,230/- was paid by the petitioner by cheque No.076676 dated 03.12.2001 towards the balance amount of tax payable as per the proceedings of the respondent in CST No.27502/1996-97 dated 19.10.2001. The said sum was adjusted against the excess amount available in CST for 1976-77 in the books of the respondent. In total, an amount of Rs.2,38,992/- and Rs.44,230/- aggregating Rs.2,83,222/- was in excess, which is liable to be refunded or transferred to the petitioner herein.

3. The petitioner would further contend that vide letter dated 22.01.2008 with reference No.U/CTO/GC/12, the petitioner requested the respondent to refund the said excess amount or transfer the same to C.T.O., Perambur-I Assessment Circle, so that it can be adjusted towards the tax payable for the subsequent years. The petitioner would further contend that the respondent, instead of refunding the amount, has passed the impugned proceedings dated 23.01.2008. In the said proceedings, even though the respondent has admitted that there was excess amount of Rs.2,83,222/- lying with them, they declined to enter refund or transfer the same to the CTO, on the ground that more than 5 years has been elapsed from the date of final assessment and they cannot revise the order under Section 55 of TNGST Act, 1959. The petitioner would allege that the petitioner neither invoked Section 55 of the TNGST Act, 1959 nor sought any rectification of any error on the face of the assessment order. Instead the petitioner pleaded for only either refund of the amount paid in excess or in alternative, the excess amount can be transferred to C.T.O., Perambur-I Assessment Circle, so that it can be adjusted for future liability of tax.

4. The petitioner would also contend that when there is an error apparent on the face of the order of the assessment, it can be rectified by complying Section 55 of the Act. For every demand raised, the petitioner has obliged to pay. Instead of adjusting the same, the respondent collected excess payment. Having given Form C for refund, the respondent ought to have refunded the money by way of refund voucher to the petitioner or to adjust the said amount by transferring the same to C.T.O. Perambur Assessment Circle, at the request of the petitioner. The respondent having failed to comply with such a lawful and

legitimate request made by the petitioner, had passed an illegal and patently wrong order, which is challenged by way of filing this writ petition before this Court.

5. The respondent had not filed any counter, but the learned counsel for the respondent has produced before this Court the parawar remarks which was signed by the respondent/Assistant Commissioner (CT) on 15.04.2008, and this Court has treated this parawar remarks as a counter, wherein, it is stated that even though double credit payment has been made, the same was noted only on 22.01.2008, till then, neither the dealer nor the Assessing Officer had an occasion to notice the excess credit in the account of the assessee for the year 1996-97. They also agreed that the dealer was finally assessed to a total and taxable turnover of Rs.40,87,97,861/- and Rs.37,15,40,985/- for the year 1996-1997 by an order dated 12.01.2000 resulting in excess payment of Rs.6,27,028/- which was duly transferred to the C.T.O., Perambur-I Assessment Circle on 15.03.2000 when the assessment for subsequent years were transferred. The above assessment was subsequently revised on 19.10.2001 resulting in a further demand of Rs.2,38,992/-. As per refund due for the year 1994-1995 to an extent of Rs.1,94,034/- and Rs.44,953/- vide 'M' S.No.4/2001-2002 totaling Rs.2,38,992/- was available in the refund register and the above amounts were adjusted on 23.11.2001. However, the assessee has also paid an amount of Rs.2,38,992/- vide SBI Challan dated 13.12.2001 and the same is found to be credited into the account of the assessee in the year 1996-1997. The above double credit was noticed on 22.01.2008 till then neither the dealer nor the assessing Officer had an occasion to notice the same.

6. It is also submitted in the parwar remarks that the Commercial Tax Officer, Perambur-I Assessment Circle requested to transfer all the refunds due to the assessee, the relevant records were verified and the following amount due to be refunded to the assessee was transferred to the Commercial Tax Officer, Perambur-1, Assessment Circle, vide R.C.No.1330/2006 A3 dated 22.01.2008, of the office of Assistant Commissioner, Greams way Road, C.T., Circle III which is extracted hereunder:-

| Act | Year | Amount of Refund Transferred. | M.Sl.No. |
|---|---|---|---|
| CST | 93-94 | 23162 | 4/4 |
| CST | 94-95 | 64376 | 8/8 |
| CST | 97-98 | 257714 | 12/13 |

The above transfer was made after thorough verification of records. However, the transfer of excess credit for 1996-97 to the tune of Rs.2,38,992/- i.e., the claim of the assessee, could not be complied with, since there is no refund due as per M. Register or by any revision of assessment.

7. The learned counsel for the respondent would also contend that if the claim is made within 5 years from the date of the order of revision dated 19.10.2001 i.e. before 18.10.2006, the order dated 19.10.2001 would have been revised under Section 55 of the TNGST Act. Since already 5 years lapsed, the excess credit available can not be refunded by way of revision. Hence, the impugned order was passed on 23.01.2008 rejecting the claim of the assessee. The learned counsel for the respondent would further contend that the amount of Rs.44,230/- which was paid by the petitioner on 03.12.2001 as per proceedings in C.S.T.No.27502/1996-97 dated 19.10.2001, was also found adjusted towards refund due for 1976-77 on 23.11.2001. Since there is no refund due as per refund register, the excess credit in the assessment could not be brought out as the exercise of revision, which is barred by limitation.

8. It could be further seen from the parawar remarks that the assessee in their letter dated 27.07.2006, claimed the following refund to be transferred:-

| Assessing year | Tax | Surcharge | Addl. Surcharge | Addl.Tax |
|---|---|---|---|---|
| 1991-92 | 2612149 | 375425 | 147136 | 497714 |
| 1991-02 | 13429 | Revision order-TNGST/37174/91-92 | | |
| 1994-95 | 200574 | 6589 | 2248 | 112892 |
| 1997-1998 | 132315 | 0 | 0 | 0 |
| Total Refund | 2958467 | 382014 | 149384 | 610606 |

Out of the said refund amount, Rs.36,32,424/- related to the year 1991-92 was found to be wrongly claimed as the said amount was already transferred to the Commercial Tax Officer, Perambur-I Assessment Circle on 27.04.2005 itself and was found to be given credit for the year TNGST/2002-2003 Rs.27,50,596.00, TNGST 2000-01 Rs.2,52,742, + CST 2000-2001 Rs.6,29,086 total Rs.36,32,424/- by Commercial Tax Officer, Perambur-I Assessment Circle. After verification of the records, the following amount was transferred on 08.08.2006.

| TNGST Act | | | | | |
|---|---|---|---|---|---|
| M. Register S.No. | Date of order | Assessment No and Year | Name of the dealer | Amount | TAX, SC, Penalty |
| 45/25 | 31.8.05 | 1991-92 | Indian Piston Ltd | 13249 | Penalty |
| 7/7 | 16.2.2001 | 1040010/ 97-98 | -do- | 51898 | Tax |
| CST | | | | | |
| 9/9 | 10.4.2000 | 27502/ 95-96 | -do- | 82569 | Tax |

9. It is also contended in the parwar remarks that even though there is double credit made by the assessee and the assessee claimed refund by letter dated 22.01.2008, the amount claimed is not able to be refunded, as no refund amount is available in the M Register. The excess credit could be taken to refund register only by statutory order by way of revision under Section 55 of the TNGST Act, for which the period of 5 years from the date of last order prescribed had lapsed on 18.10.2006 and the claim of the petitioner which has been made belatedly after the period of limitation cannot be acted upon and the writ petition deserves to be dismissed.

10. Heard the learned counsel for the petitioner as well as learned counsel for the respondent and also perused the material available on record.

11. The petitioner has filed a petition dated 22.01.2018 before the respondent seeking to refund an amount of Rs.1,94,039/- available in the TNGST Accounts for 1994-95 and an excess amount of Rs.44,953/- available in the CST accounts for 1976-77 adjusted towards TNGST 1996-97 another amount of Rs.44,230/- adjusted from 76-77 to CST balance of 96-97. In this regard, it is stated in the impugned order dated 23.01.2008 by the respondent that the excess amount found place in M. Register Sl.No.25/01-02 under TNGST Act and M.SI.No.4/01-02 under the CST Act were adjusted to 1996-97 demand of Rs.2,38,992/- and CST balance of Rs.44,230/- which accrued by way of revision under both act dated 19.10.2001. Though the assessee have paid the additional amount of Rs.2,38,992/- under TNGST Act as well as Rs.44,230/- under CST Act in addition to the amount already adjusted it is refundable only by way of revision under Section 55 of the Act. As the time of 5 years from the date of Final Assessment that is 12.01.2000 as well as

the date of revision dated 19.10.2001 already lapsed the request of the assessee to refund the amount of Rs.2,83,222/- could not be complied with.

12. Section 55 of TNGST Act, 1959 reads as follows:-

55. Power to rectify any error apparent on the face of the record._

(i) 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.

(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.

The expression error apparent from record which will cover mistakes of law and of fact as well as clerical and arithmetical mistakes. But at the same time the mistake should not be such which can be established only by a long drawn process of reasoning or is a debatable point of law.

13. This Section 55 of the TNGST Act, does not throw light on the question raised by the petitioner herein. There is no error to be rectified, and it is only the amount which has been paid in excess has to be refunded to the petitioner. There is no enhancement of assessment or reduction in the assessment, it is only the excess payment made by the assessee without taking note that already the amount has been adjusted and double credit is given by the petitioner into the account of the respondent. Once it is found that there is double payment and also the same has been transferred to the account of the another assessment circle by the assessing officer, automatically this amount has to be given credit to the subsequent years. When no such credit

has been given, and when the mistake has not been found by either parties till 22.01.2008, the denial by the respondent that they will act as per Section 55 cannot be accepted by this Court.

14. It would be seen from the records that the excess amount paid by the petitioner have been adjusted to the subsequent years also has to be taken into account and in the parawise remarks, which is treated as counter by this Court, the respondent had stated that the excess amount was transferred to the commercial tax officer, Perambur, Assessment Circle and now the respondents vide R.C.No.1320/06A3 dated 23.01.2008 can not say that they have to act as per Section 55 of the TNGST Act and only when there is an error apparent on the face of the order, they can rectify the same, is not acceptable by this Court. It is not in dispute that the petitioner's company paid a sum of Rs.2,38,992/- by cheque dated 06.12.2001 towards balance amount of tax payable as demanded by the respondent. The respondent counsel also fairly submitted that Rs.1,94,039/- was paid as excess amount in TNGST for the assessment year 1994-1995 and Rs.44,953/- was available in CST 1976-77, totalling Rs.2,38,992/- which was adjusted by the respondent resulting in excess payment of the above said amount. In the similar assessment also, the respondent adjusted the excess amount available during the subsequent years. However, excess payment, Rs.2,38,992/- and Rs.44,230/- totalling an amount of Rs.2,83,222/- was not adjusted against any assessment year subsequent to any of the demand made by the respondent by themselves. In other ways, an amount of Rs.2,83,222 is lying with the respondent without being adjusted either under TNGST not under the CST by the respondent for the subsequent years.

15. The only question raised in this case is whether the excess amount lying with the respondent could be refunded to the petitioner as he sought for refund and whether the respondent by the impugned order justified in rejecting the refund relying on Section 55 of TNGST Act 1959?

16. On plain reading of Section 55 of TNGST Act, the power is conferred on the Assessing Authority to rectify any error apparent on the face of the record. However no such rectification, which has effect of enhancing an assessment or penalty, shall be made unless such authority has given prior notice to the dealer or the assessee as a case may be giving him reasonable opportunity of being heard. Section 55 clearly stipulates the power of an Assessing Authority to rectify the error apparent on the face of the record. However, Section 55 is not applicable for any excess payment. In other words, Section 55 provides only for rectification of the error. It

would be seen from the records available that the petitioner has paid the excess amount of Rs.2,83,222/- which is also not disputed by the respondent. This Court is unable to accept the arguments put forth by the learned counsel for the respondent that in view of Section 55 of the TNGST Act which stipulates 5 years period to rectify any error apparent on the face of the record would include the excess payment made by the assessee also. Section 55 has no co-relation with regard to the payment made in excess to the assessment made by the Assessing Authority or Appellate Authority. Section 55 of TNGST Act will apply only to the assessment order, when there is an error apparent on the face of the record to be rectified by the Assessing Authority or the Appellate Authority, within a period of 5 years. It could be seen that despite there being an excess amount lying with the respondent, the respondent has not chosen to adjust the same during the subsequent assessment years. If they had adopted such measures of adjustment during subsequent years, the question of petitioner seeking refund would not have arisen as even in the past there was excess payment, which was subsequently adjusted by the respondent. During the previous assessment, excess amount paid was subsequently adjusted to the latter years, however, when such adjustment has not been made by the authorities, the petitioner has sought for refund of the excess amount paid by the petitioner. It could be seen that the grievance of the petitioner is well founded and the petitioner is entitled for refund of the excess amount paid, which is lying with the respondent. The impugned order of the respondent, which states that the request of the petitioner for refund can not be entertained as the time of 5 years elapsed from the final assessment as well as the date of revision has already been lapsed cannot be justified, as Section 55 of TNGST Act has no application for refund of money, which is sought by the petitioner herein. Therefore, the respondent is bound to refund the amount to the petitioner.

17. Under these circumstances, the writ petition is allowed thereby setting aside the impugned order dated 23.01.2008. The respondent is directed to refund Rs.2,83,222/- to the petitioner account with interest at 6% per annum by way of refund voucher within a period of eight weeks from the date of receipt of a copy of this order. No costs.



Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

AT

To

The Assistant Commissioner (CT),
Fast Track Assessment Circle-III,
PAPJM Building, Greams Road,
Chennai - 600 006.

+1cc to Mr.B.Raveendran, Advocate, S.R.No. 50966
+1cc to the Special Government Pleader(Taxes), S.R.No. 51465

W.P.No.6421 of 2008

GP(CO)
GN(17/09/2018)