IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE M.S.RAMESH

Tax Case No.95 of 2015

M/s.Vishnu Cement Ltd.,
No.38, Veerabadran Street,
Chennai 600 034.
(now merged with M/s.Zuari Cement Ltd.
Rayala Techno Park, 2nd Floor,
144/7, Rajiv Gandhi Salai (OMR),
Kottivakkam, Chennai 600 041.) Petitioner

Vs.

The State of Tamil Nadu
rep. by the Joint Commissioner
of Commercial Taxes,
Chennai (Central) Division,
Chennai. Respondent

Tax Case filed under Section 38 of the TNGST Act, 1959 read with Rule 30 of the TNGST Rules, 1959 against the order of the Tamil Nadu Sales Tax Appellate Tribunal, (Additional Bench), Chennai, dated 17.12.2014 made in T.A. No.33 of 2004 and against the Appellate Assistant Commissioner (CT) VII, Chennai-600108, dated 31.10.2003 made in Appeal No.and year: AP 400/99 and against the Commercial Tax Officer, Valluvar Kottam Assessment Circle, Chennai, dated 31.07.1995, made in TNGST/110202 Assessment Year 93/94..

For Appellant : Mr.C.Subramanian for
Mr.B.Raveendran
For Respondent : Ms.G.Dhana Madhri, G.A. (Taxes)

JUDGMENT
(Delivered by DR.VINEET KOTHARI,J)

Heard the learned counsel for the parties.

2. The Assessee, M/s.Vishnu Cement Limited has filed this Revision Petition aggrieved by the order dated 17.12.2014 passed by the learned Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai dismissing Appeal No.33/2004 for the

Assessment Year 1993-94, by raising the following substantial questions of law:-

> "i) Whether in the facts and circumstances of the case, the Appellate Tribunal was right in upholding the order of the first appellate authority dismissing the first appeal filed by the petitioner herein as not maintainable when the first appeal had been numbered and heard on merits?
>
> ii) Whether in the facts and circumstances of the case, the Appellate Tribunal was right in overlooking the fact that as per Sec.55(4) of the TNGST Act, an appeal would lie against an order passed u/s.55 of the Act?
>
> iii) Whether in the facts and circumstances of the case, the Appellate Tribunal was right in not considering the fact that in respect of the very same transaction, tax under the CST Act, 1956, had been paid in the State of Andhra Pradesh and the levy under the TNGST Act, 1959, would amount to double taxation?"

3. The learned Tribunal held that since the Rectification under Section 55 of the TNGST Act was allowed as prayed by the Assessee itself, the Appeal of the Assessee against the said order dated 31.7.1995 was infructuous.

4. The relevant observation of the learned Tribunal in the impugned order is quoted below for ready reference:-

> "The original assessment for the year 1993-94 under TNGST Act, 1959 was passed on the appellants by the Assessing Officer on 31.03.1995. Subsequently, as seen at page 573 of assessment file 1993-94/TNGST Act, the dealers have requested, vide their letter dated 31.05.1995, to revise the order after taking into account the actual tax paid as per the statement enclosed. The Assessing Officer, also, found that the tax paid under CST Act, 1956 was wrongly taken credit under TNGST Act to arrive at the balance, hence, to rectify this error apparent on the face of record, he has revised the assessment considering the actual tax paid under TNGST Act, 1959 under section 55 of TNGST Act, 1959. Against this revision order dated 31.07.1995, the dealers have preferred appeal

before the Appellate Assistant Commissioner (CT), which was dismissed as not maintainable, because, only those orders passed under section 31 of TNGST Act, 1959 are alone appealable before the Appellate Assistant Commissioner(CT). The Appellate Assistant Commissioner (CT) has relied on the decision of Hon'ble High Court of Madras in the case of State of Tamil Nadu Vs. Subbu Chemicals (102 STC 613), to dismiss the appeal. Considering the facts of this case, we could find that the Assessing Officer has passed the assessment order only to rectify the mistake pointed out by the dealers. This revision for rectification does not assessed any escaped turnover for tax, to call it as revision under section 16 of TNGST Act, 1959, for which alone appeal stands before the Appellate Assistant Commissioner(CT). Further, the Hon'ble High Court of Madras in its order in W.P.No.11008 & 11009 of 2004 dated 17.02.2011, has remanded the issues to Assessing Officer for fresh consideration, wherein the disputed assessment orders were revisions made under section 16 of TNGST Act, 1959, not the one passed under section 55 of TNGST Act, 1959. Moreover, as per section 36 of TNGST Act, 1959, only the orders passed by Appellate Assistant Commissioner (CT) under section 31(3) by Appellate Deputy Commissioner (CT) under section 31-A(3) by Deputy Commissioner (CT) under section 32(1) only are appealable before the Tribunal. Factually, the order of Appellate Assistant Commissioner (CT) dated 31.10.2003 is not the one falling under the above categories, to be eligible for appeal before this Tribunal. In the revision order dated 31.7.1995 passed for rectifying the mistake, there is no merger of original assessment order dated 31.03.1995, in such circumstance, the original assessment order dated 31.03.1995 remains intact. Further though the Appellants have challenged the original Assessment, the Appellants ought have file the Appeal within one month from the date of receipt of order. One can not wait months together or years together expecting when the Assessing Officer will revise the assessment. So the appeal also time barred. Hence the Appeal is not entertainable on both grounds. Therefore, the plea of the appellants for remanding the issue to the Assessing Officer with the direction to

> pass fresh orders after observing the principles of natural justice, could not be entertained, because, there is no disputed turnovers involved in the revision order dated 31.07.1995 and the rectification of mistake of wrong credit was done only based on the request of the dealers. Further, this assessment order again rectified on 19.03.96 (Assessment File Page-599) on the request of the dealers. No where it was stated that the dealers objected the turnovers.
>
> Therefore, in view of the above facts and circumstances, there is no merit in the plea of the appellants narrated in the grounds as well as the averments putforth through arguments. As we find no reason to interfere in the order of Appellate Assistant Commissioner (CT), we confirm the order of Appellate Assistant Commissioner(CT)."

5. The learned counsel for the Assessee Mr.C.Subramanian fairly submitted that the Assessment for the Assessment Year 1993-94 in question was completed by the Assessing Authority on 31.3.1995 and against the inter-State Sales made by the Assessee, tax was paid under the CST Act in the other State, but, the Assessing Authority wrongly imposed the local Sales Tax under the TNGST Act vide the Assessment Order dated 31.3.1995. Since the CST paid by the Assessee on the inter-State sales was wrongly adjusted in the present Assessment Order against the local Sales Tax, the Assessee filed the Rectification Application and the order 31.7.1995 passed thereon merged with the original Assessment Order dated 31.3.1995 itself, therefore, the Assessee challenged only the Rectification order dated 31.7.1995 before the Appellate Assistant Commissioner, who dismissed the Appeal of the Assessee as infructuous and the Tribunal upheld the order of the Appellate Authority dismissing the Appeal. He submitted that the Original Assessment Order dated 31.3.1995 stood merged with the Rectification Order dated 31.7.1995 passed by the Assessing Authority and therefore, the Appeal against the Rectification Order was maintainable before the Appellate Authority and both the Tribunal and the Appellate Authority erred in rejecting the Appeal as infructuous.

6. The learned Government Advocate Ms.Dhana Madhri appearing for the Revenue, however, supported the impugned order and submitted that without assailing the Original Assessment Order dated 31.3.1995, the Assessee cannot contend that the local Sales Tax could not have been imposed on such Sales made by the Assessee of the goods received in the course of inter-State Trade or Commerce.

7. Having heard the learned counsel for the parties, we are satisfied that the Original Assessment order does not merge with the Rectification Order passed by the Assessing Authority. In the present case, the Rectification as prayed by the Assessee only was allowed by the Assessing Authority himself and therefore, we do not find any reason for the Assessee to to file further Appeal against such Rectification Order in his own favour.

8. We fail to understand what prevented the Assessee from assailing the Original Assessment Order dated 31.3.1995 itself. The submission made by the learned counsel for the Assessee that the Original Assessment Order stood merged with the Rectification Order is misconceived and is liable to be rejected.

9. It is only if the Appellate Order is passed on the merits of the case, then the Original Assessment Order can merge with the Appellate Order and not in a case like this where the Rectification Order is passed at the instance of the Assessee itself and as requested by it. In the absence of any challenge to the Original Assessment Order, the Assessee cannot, obviously, be allowed to assail the original Assessment Order by laying a tangent challenge to the Rectification order.

10. We are surprised to see that against the Assessment Order for the Assessment Year 1993-94, except keeping alive the aforesaid misconceived contention, the Assessee has never even considered to file any Appeal against the Original Assessment Order. Whether the local Sales Tax was rightly imposed by the Assessing Authority or not can be seen only if the Original Assessment Order is challenged by the Assessee before the Appellate Authority. Since the Rectification Order does not discuss anything about the legality of the imposition of the local Sales Tax or otherwise, we cannot permit the Assessee to assail the Original Assessment Order in the aforesaid manner.

11. Therefore, we do not find anything wrong in the order passed by the learned Tribunal and the present Tax Revision filed by the Assessee is without any merit and the same is

liable to be dismissed. Accordingly, it is dismissed. The questions of law are answered against the Assessee and in favour of the Revenue. No order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssk.

To

1.The Joint Commissioner
of Commercial Taxes,
Chennai (Central) Division,
Chennai.

2.The Tamilnadu Sales Tax,
Appellate Tribunal(Additional Bench),
Chennai-600 104.

3.The Appellate Assistant Commissioner(CT) VII,
Chennai-108.

4.The Commercial Tax Officer,
Valluvarkottam, Assessment Circle,
Chennai.

+1cc to Special Government Pleader(Taxes), S.R.No.36613

T.C. No.95 of 2015

NR(CO)
KKV/08/01/2021