IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

WRIT PETITION NOS.8906 TO 8910 OF 2015
&
M.P.NOS.1, 1, 1, 1 & 1 OF 2015

M/s.VDSR Rolling Mills,
Rep.by its Managing Partner,
No.1 Thandarampattu Road,
Tiruvannamalai 606 601 ... Petitioner in all W.Ps.

..vs..

1. The Appellate Deputy Commissioner (CT),
No.4 Bharathiyar Salai,
Government Building,
Vellore 632 001

2. The Assistant Commissioner (CT),
Tiruvannamalai II Assessment Circle,
Tiruvannamalai
... Respondents in all W.Ps.

Common Prayer:-

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus Calling for the records of the first respondent in his proceedings in N.Dis.200/2015; 201/2015; 202/2015; 203/2015; and 204/2015 quash the Return Memos dated 16.02.2015 issued therein and further direct the first respondent to entertain the appeals filed by the petitioner for TNVAT 2012-13; 2011-12; 2010-11; 2008-09 and 2007-08, respectively.

For Petitioner (in all W.Ps.) : Mr.P.Rajkumar

For Respondents (in all W.Ps.) : Mr.A.N.R.Prathap,
Govt. Advocate (Taxes)

COMMON ORDER

The petitioner has filed these writ petitions challenging the proceedings of the first respondent i.e., return memos dated 16.02.2015, whereby, the appeals preferred by the assessee were rejected as not entertainable.

2.Contextual facts of the case, in nub, depict as follows:

2.1 The petitioner is engaged in the manufacture of TMT Bars and is registered on the file of the second respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short "the Act"). Between 06.08.2013 and 09.08.2013, the petitioner's place of business was inspected by the Enforcement Wing Officials and it was pointed out that the finished goods manufactured out of raw materials purchased locally, have been stock transferred to other States and hence, ITC has to be reversed as per Section 19(4) of the Act. Though the petitioner explained that the finished goods manufactured out of raw materials procured from outside the State alone have been stock transferred to other States, for which, no ITC has been claimed and so, the reversal of ITC under Section 19(4) of the Act does not arise, the Inspecting Officers rejected the said explanation put forth by the assessee and determined the ITC to be reversed for the assessment years 2007-08 to 2012-13 and collected a total amount of Rs.2,04,419/- towards tax.

2.2 Based on the inspection report, the second respondent issued pre-revision notices dated 13.01.2014. In response to the same, the petitioner filed their objections. However, the second respondent brushed aside the said objections and passed orders dated 04.09.2014 confirming the proposals contained in the revision notices in respect of the assessment years 2007-08, 2008-09, 2010-11, 2011-12 and 2012-13. Subsequently, the petitioner filed applications dated 27.10.2014 to the second respondent requesting to rectify the assessment orders dated 04.09.2014 by giving credit to the tax collected at the time of inspection. By orders dated 22.12.2014, the second respondent rectified the assessment orders dated 04.09.2014.

2.3 Thereafter, the petitioner filed appeals on 09.01.2015 against the assessment orders dated 04.09.2014 before the first respondent / appellate authority, upon payment of the mandatory pre-deposit of 25% of the taxes. However, the first respondent returned the said appeal papers for want of proof of service of the assessment orders. Subsequently, the petitioner represented the same, after rectifying the defects. Again, by proceedings (return memos) dated 16.02.2015, the first respondent rejected the appeal papers, as not maintainable. Questioning the said return memos and also seeking a direction to the first respondent to entertain the appeals filed by the petitioner for the assessment years in question, the present writ petitions have been filed.

3. The learned counsel for the petitioner submitted that it is not as if the petitioner wantonly filed the appeals belatedly, but they approached the first respondent / Appellate Authority, after rectifying the mistakes found in the assessment orders by the Assessing officer and hence, the limitation for filing the appeals arises only from the date of service of the rectification orders, since the assessment orders originally passed by the Assessing Officer merge with the rectification orders. However, without considering the said aspect in a proper perspective, the first respondent/ Appellate Authority returned the appeals on the ground of limitation.

4. On the other hand, the learned Government Advocate (T) appearing for the respondents submitted that the appeals filed by the petitioner are barred by limitation and hence, the impugned orders need no interference by this Court. He also submitted that rectification is resorted to, to correct clerical or arithmetical errors and it presupposes the continuance of the original order with the change incorporated. Adding further, he submitted that rectification is the process by which an order, which contains an error, is set right; when rectification is directed, there is no merger, as there is no order into which the original order can merge and the original order has to be read subject to the corrections/modifications made in the rectification order. Thus, according to him, when a mistake in an order is rectified, the original order is not set aside, the original order remains on record and the mistakes or omissions are corrected therein and hence, the limitation arises only from the date of service of the original assessment orders.

5. Heard both sides and perused the materials placed before this Court, more particularly, the impugned return memos, which are verbatim same for all the assessment years in question. For better appreciation, one such memo is extracted hereunder:-

> "Your attention is invited to the reference cited. Your reply filed in the reference 3rd cited is examined and informed that you have received the appealable order on 30.9.14. Therefore you should have filed appeal application on or before 30.10.14 or before 29.11.14 if filed delayed. But you have filed appeal application only on 9.1.15 and pointed a reason that you had filed a petition before the concern Assessing Officer to pass rectification order u/s.84.

In this regard you are informed, that the reason stated in your reply is not found to be acceptable as the rectification order dated 22.12.14 covers only the tax payment portion and it does not contain any modifications on the issues raised in the earlier order dated 30.9.14. As you have filed this appeal by disputing the dis-allowance of ITC pointed out in the original order dated 30.9.14 and the rectification order does not contain anything about this, your appeal application can be considered only as a Time Barred one. Hence rejected as Not entertainable."

6. The fact remains that the Assessing Officer passed the orders relating to the Assessment Years 2007-08, 2008-09, 2010-11, 2011-12 and 2012-13, on 04.09.2014. Subsequently, the petitioner filed applications dated 27.10.2014 to the same Assessing Officer requesting to rectify the said assessment orders, by giving credit to the tax collected at the time of inspection by the Enforcement Wing Officers. Accordingly, the Assessing Officer rectified the assessment orders on 22.12.2014, which were served on the petitioner on 29.12.2014. Thereafter, the petitioner filed appeals on 09.01.2015 challenging the assessment orders dated 04.09.2014, which were returned by the first respondent/Appellate Authority, vide the impugned memos dated 16.02.2015, on the ground of limitation.

7.According to the petitioner, once an assessment order has been subsequently rectified or modified, the assessment order originally passed merges with the rectification order and the limitation for filing the appeal should be calculated only from the date of service of the rectification order and not from the date of service of the assessment order originally passed and hence, the appeals filed by them against the assessment orders in question are well within the prescribed period of limitation. However, the first respondent, without considering the submission made by the petitioner and without appreciating the grounds made in the appeals, has simply returned the appeal papers on the ground that the rectification order deals only with the payment details and not with reference to the issue.

8.The aforesaid stand of the petitioner was stoutly resisted by the learned Government Advocate (T) appearing for the respondents stating that when a mistake in the assessment order is rectified, the original order is not set aside, it remains on record and the mistakes or omissions are corrected therein and hence, the limitation for filing the appeals arises only from the date of service of the original assessment orders.

9.This Court is of the view that when the Assessing Officer has committed certain mistakes in the assessment orders and the same were rectified later on, it is not reasonable to expect the petitioner / assessee to file the appeals against the incorrect assessment orders. Further, the reasons for delay in filing the appeals should be considered with pragmatism and justice-oriented approach rather than technical point of view. If the condonation of delay is refused, it is all more probable that the matter would be thrown out on the basis of technicalities, in which event, the petitioner may be prejudiced. In this regard, this Court is inclined to refer to the observations of the Supreme Court in State of Madhya Pradesh Vs. Pradeep Kumar and another [2000 (IV) CTC 434], wherein in para 12, it has been held as follows:

> "12.It is true that the pristine maxim Vigilantibus Non Dormientibus Jura Subveniunt (Law assists those who are vigilant and not those who sleep over their rights). But even a vigilant litigant is prone to commit mistakes. As the aphorism to err is human is more a practical notion of human behaviour than an abstract philosophy, the unintentional lapse on the part of a litigant should not normally cause the doors of the judicature permanently closed before him. The effort of the court should not be one of finding means to pull down the shutters of adjudicatory jurisdiction before a party who seeks justice, on account of any mistake committed by him, but to see whether it is possible to entertain his grievance if it is genuine."

Therefore, the impugned return memos of the first respondent are liable to be set aside.

10. Accordingly, the return memos dated 16.02.2015 by the first respondent are set aside and the delay in filing the appeals is condoned. The petitioner is granted two weeks time from the date of receipt of a copy of this order to represent appeal papers before the first respondent/ Appellate Authority, who shall entertain the same, without raising any issue with regard to limitation and consider the same and pass appropriate orders, on merits and in accordance with law, that too, after affording an opportunity of personal hearing to the petitioner. Such an exercise shall be completed by the first respondent / Appellate Authority within a period of four weeks from the date of representing the appeal papers by the petitioner.

11. All these writ petitions stand allowed as prayed for. No costs. Consequently the connected MPs are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Appellate Deputy Commissioner (CT),
   Vellore, No.4 Bharathiyar Salai,
   Government Building, Vellore 632 001.

2. The Assistant Commissioner (CT),
   Tiruvannamalai II Assessment Circle,
   Tiruvannamalai.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.22417
+1cc to the Special Government Pleader (T), S.R.No.23008

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CP(CO)
CS/14/07/2020