IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.3114 OF 2019
AND
W.M.P.NO.3376 OF 2019

(THROUGH VIDEO CONFERENCING)

M/s.IMA Sewing Solutions,
Represented by its Proprietor,
No.10/18A, Venkata Krishna Nagar,
Arumbakkam, Chennai - 600 106. ... Petitioner

Vs

The Commercial Tax Officer,
Arumbakkam Assessment Circle,
Chennai - 600 102. ... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in CST 867097/2011-12, quash the assessment order dated 16.06.2015 made therein and further direct the respondent to pass a fresh assessment order for the assessment year CST 2011-12 by considering the rectification application dated 07.12.2018 on merits.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.D.Ravichander
Government Counsel

ORDER

Mr.D.Ravichander, learned Government Counsel takes notice on behalf of the respondent.

2. The petitioner has challenged the impugned order passed by the respondent rejecting the request of the petitioner for rectification of an Assessment Order dated 16.06.2015 passed

under Section 84 of the Tamil Nadu Value Added Tax Act, 2006. (hereinafter referred to as the TNVAT Act).

3. It is the case of the petitioner that the petitioner by oversight failed to file an appeal and realized the mistakes only when a consequential order dated 30.10.2018 was passed under Section 19(5)(C) of TNVAT Act for the Assessment Year 2011-2012 to recover the proportionate Input Tax Credit.

4. The learned counsel for the petitioner submits that there are errors apparent on the face of record in the Assessment Order dated 16.06.2015 under CST for the Assessment Year 2011-2012 which ought to have been rectified by the respondent under Section 84 of the TNVAT Act as made applicable for the rectification of mistakes under CST Act.

5. The learned counsel for the petitioner further submits that Section 84(2) of the TNVAT Act also contemplates a personal hearing by the respondent and therefore the impugned order is liable to be quashed with the liberty to the petitioner to make appropriate representation before the respondent.

6. Appearing on behalf of the respondent, the learned Government Counsel submits that assessment under CST for the Assessment Year 2011-2012 was finally assessed on 16.06.2015. It is submitted that rectification application cannot be an appeal in disguise.

7. It is further submitted that there is no error apparent on the face of record and the only manner in which the aforesaid order could have been challenged was by way of an appeal/by filing an appeal before the Appellate Commissioner, which the appellant/petitioner failed to exercise.

8. It is therefore submitted that an application dated 07.12.2018 for rectification of alleged mistake has been correctly rejected by the respondent vide impugned order dated 08.01.2019.

9. The learned Government Counsel for the respondent has placed reliance on the decision of this Court in Sneva Diamond Tools (P.) Ltd., Vs Appellate Assistant Commissioner (Commercial Taxes), (1989) 72 STC 329, wherein, this Court has held that error apparent on the face of record can cover only clerical and arithmetical mistakes and since the very basis of assessment is sought to be rectified in the application dated 07.12.2018, the impugned order passed on 08.01.2019 is to be sustained.

10. Heard the learned counsel for the petitioner and the learned Government Counsel for the respondent. I have perused

the impugned order dated 08.01.2019 and the Assessment Order dated 16.06.2015 under CST for the Assessment Year 2011-2012 and the consequential order passed for reversal of Input Tax Credit on 30.10.2018 for the same Assessment Year and the copy of the rectification application dated 07.12.2018. I have also perused the provisions of the TNVAT Act, 2006 and the provisions of the CST Act, 1956.

11. This is the case where the petitioner had failed to challenge the Assessment Order dated 16.06.2015 in time before the Appellate Commissioner. This is not a case where there is an error apparent on the face of record for the petitioner to invoke the jurisdiction of the Assessing Officer under Section 84 of the TNVAT Act, 2006.

12. The amount involved is also meagre amount of Rs.33,063/- on account of the consequences of the Assessment Order under CST for the Assessment Year 2011-2012. Therefore, there is not only no merits in the present writ petition but also no equity in favour of the petitioner.

13. Accordingly, this Writ Petition is dismissed with liberty to the petitioner to file a revision application, if such application can be filed in accordance with law. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rgm/arb

To

The Commercial Tax Officer,
Arumbakkam Assessment Circle,
Chennai – 600 102.

W.P.No.3114 of 2019
and
W.M.P.No.3376 of 2019

GSM(CO)
PM/01/12/2021