IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.08.2021

CORAM:

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

WP Nos.5427 & 5428 of 2014
and
M.P.Nos.1 + 1 of 2014

M/s.Lal Construction Company,
No.8, 3rd Floor, Lokesh Enclave,
No.19, Club Road,
Chennai - 600 031 .. Petitioner in both WPs.

Vs

Assistant Commissioner (CT),
Esplanade I Assessment Circle,
Chennai - 600 001. .. Respondent in both WPs.

COMMON PRAYER: These Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the respondent and quash the revision of assessment proceedings in TIN No. 33830100418/2006-07 and TIN No. 33830100418/2007-08 dt 15.11.2013 wherein goods purchased from other States are assessed at higher rate of taxes and direct the respondent to rectify the mistakes and pass orders considering the representation filed on 30.1.2014 after giving an opportunity of personal hearing.

For Petitioner in both WPs	:	Mr.C.Baktha Siromoni
For Respondents in both WPs	:	Mr.V.Veluchamy Government Advocate

C O M M O N O R D E R

The relief sought for in the present writ petitions is to call for the records in the assessment proceedings dated 15.11.2013 for the Assessment Years 2006-07 and 2007-08 and quash the same and direct the respondent to rectify the mistake and pass orders considering the representation filed by the petitioner on 30.01.2014.

2. The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act. The petitioner is an assessee in the files of the respondent. The petitioner is doing works contract in the State and also in other States.

3. The learned counsel for the petitioner mainly contended that assessment orders were passed by the respondent for the assessment years 2006-07 and 2007-08. However, there was a mistake in not considering the judgment of the Hon'ble Supreme Court and the authorities have further failed to consider the provisions of the Act in the right perspective.

4. It is contended that on account of an erroneous implementation of the provisions of the Act, the mistake occurred and further the principles laid down by the Hon'ble Supreme Court has not been followed by the respondent. Thus, the petitioner submitted a representation on 30.01.2014 for rectification of the mistake and the said application was not considered. Therefore, the petitioner has moved the present writ petition.

5. It is pertinent to note that the petitioner submitted a representation on 30.01.2014 and it was sent by registered post. The writ petitions itself were filed on 19.02.2014 within a period of 12 days from the date of sending the representation. The petitioner has not even allowed the respondent to look into the representation. Simply by filing the representation, he has approached the Court by citing that there was a mistake in the assessment orders and he has filed an application for rectification of mistake and therefore, the impugned assessment orders have to be quashed and fresh assessment orders need to be passed.

6. Such conduct of a dealer can never be encouraged. The petitioner is also bound to follow the procedures contemplated under the Act. If at all an assessment order is passed and the original authority has not considered certain grounds raised by the petitioner or there was violation of provisions of the Act on considering the return filed by the assessee, then the petitioner is bound to prefer an appeal before the appellate authority, in the prescribed form and in compliance with the provisions of the Act.

7. Such rectification applications are filed by the same assessee in order to avoid filing of a statutory appeal by making pre-deposits. Therefore, this Court has to consider whether the rectification application filed is based on the

mistake or non consideration of certain points/grounds raised by the petitioner.

8. In this regard, the learned counsel for the petitioner relied on para 3 of the representation submitted by the writ petitioner on 30.01.2014. Para 3 reads as under:

> "We would like to point out that the TDS deductions 241731.00 is also included in the Taxable turnover and we are not provided the deduction of 30% for the labour charges as per Rule 8(5) of TNVAT Rules. When you have completed assessment under Section 5 of TNVAT act you should have provided this deduction of 30% for the labour charges as per law. We also wish to state that we have paid labour cess/service tax for this position of labour charges at 30% of the taxable turnover. This 30% turnover attracts both labour cess / service tax & also sale tax as sales tax was levied on the entire turnover. As per the decision of the Apex Court reported in Imagtic Creative Vs. State of Karnataka both the levies of labour cess/service tax and sales tax are mutually exclusive. So when labour cess/service tax is paid on 30% on the labour charges than no sales tax payable for the same 30% of the turnover again."

9. Perusal of the above paragraph would show that the petitioner has raised certain grounds for appeal. The petitioner wanted rectification in order to alter the findings on certain grounds. Such grounds may be raised in an appeal, however, cannot be considered as a ground for the purpose of rectification of mistake.

10. Mistake, if any in simple terms are committed by an authority, then such mistakes can alone be rectified. Under the guise of rectification of mistake, an assessee cannot be permitted to adjudicate the grounds for appeal. There is a distinction between the grounds for appeal raised on merits and rectification of mistake. Typographical errors, certain mistakes in language, etc., may be corrected in a rectification petition. Further, if any ground on merits, is raised then the petitioner is bound to file an appeal before the appellate authority by following the procedures contemplated under the Act.

11. In the present case, perusal of the representation dated 30.01.2014 reveal that the petitioner has raised grounds

on merits for the purpose of adjudication and non consideration of certain provisions of the Act and non considering the findings of the judgment of the Hon'ble Supreme Court or High Court, cannot be a point for rectification of mistake.

12. It is needless to state that judgments of Courts have to be considered with reference to facts of each case. Even then, the judgments cannot be applied directly without considering the facts of the case on hand. Thus, application of judgment or law would arise based on the facts established before the competent authority. Therefore, this Court is of the opinion that the petitioner is bound to prefer an appeal, if at all he has chosen to do so. With these observations, both the writ petitions are dismissed. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

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To

Assistant Commissioner (CT),
Esplanade I Assessment Circle,
Chennai - 600 001.

+2ccs to Mr.C.Baktha Siromani, Advocate, S.R.No.38682

+1cc to the Special Government Pleader (Taxes), S.R.No.38989

WP Nos.5427 & 5428 of 2014

PM(CO)
SU(03/09/2021)