



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.18553 and 18557 of 2021

and

W.M.P.Nos.19795 and 19798 of 2021

(Through Video Conferencing)

S.Sengodan ... Petitioner in both W.Ps.

Vs

1. The Appellate Deputy Commissioner (ST),
Salem Camp Office,
Coimbatore.

2. The State Tax Officer,
Town Circle,
Attur.

... Respondents in both W.Ps.

Common Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in Na.Ka.No.225/2021/A1 and Na.Ka.No.226/2021/A1 and quash the impugned Return Memo dated 06.08.2021 passed therein and further direct the 1st respondent to take the appeal on its file and dispose of the same in accordance with law.

For Petitioner : Mr.B.Raveendran

For Respondents: Mr.D.Ravichander
Government Counsel

ORDER

Heard the learned counsel for the petitioner and the learned Government counsel for the respondents.

2. A short point that arises for consideration is whether the office of the 1st respondent was justified in returning the appeal filed by the petitioner against the rectification order dated 29.04.2021?

3. The petitioner has challenged the impugned memo dated 06.08.2021, returning the appeal filed by the petitioner against the rectification order dated 29.04.2021 passed by the 2nd respondent under Section 84 of the Tamil Nadu Value Added



4. The facts of the case are that the petitioner had earlier suffered assessment orders on 19.03.2020 for the Assessment Years 2013-2014 & 2014-2015. Under this circumstances, the petitioner had filed an application for rectification of the mistakes under Section 84 of the Tamil Nadu Value Added Tax Act which came to be disposed by an order dated 29.04.2021.

5. The original assessment order passed on 19.03.2020 thus stood merged with the rectification order dated 29.04.2021. The petitioner therefore preferred an appeal before the Appellate Commissioner under Sections 51 and 53 of the TNVAT Act, 2006. By the impugned return memo dated 06.08.2021, the office of the 1st respondent has stated that the appeal is not maintainable as time barred.

6. Section 84 of the Tamil Nadu Value-Added Tax Act, 2006, allows rectification of mistake of an order passed by an Assessing Authority, the Appellate Authority or the Revisional Authority, including the Appellate Tribunal which passed the order under the aforesaid section, 'rectification of mistake' can be allowed on "error apparent on the face of the record".

7. Under Order 47 Rule 1 of the Civil Procedure Code, a review of a judgement is permissible and the Court can rectify an "error apparent on the face of the record" in the judgment/decreed passed by it. Order 47 Rule 7 Civil Procedure Code, which has codified the procedure also makes it clear that an order of the court rejecting the application shall not be appealable. An order granting an application for review may be objected to at once by way of an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in suit.

8. The effect of an order under review of the judgement/decreed results in vacation of the original judgement/decreed which was earlier passed. (see also the decision of the Hon'ble Supreme Court in Sushil Kumar Sen vs State of Bihar, [(1975) 1 SCC 774]).

9. In Kunhayammed v. State of Kerala, (2000) 6 SCC 359, the Hon'ble Supreme Court held observed as follows:-

"The distinction is clear. Entertaining an application for review does not vacate the decree sought to be reviewed. It is only when the application for review has been allowed that the decree under review is vacated. Thereafter the matter is heard afresh and the decree passed therein, whatever be the nature of the new decree, would be a decree superseding the earlier one. The principle or



2.5. प्रयोग ५२०

10. A reading of Sub Section (5) to Section 84 of the TNVAT Act, 2006 makes it clear that the provisions of this Act relating to appeal and revision shall apply to an order or rectification made under this section as they apply to the order in respect of which such order of rectification has been made which reads as under. Section 84(5) of the TNVAT Act, 2006 is reproduced below:-

''(5) The provisions of this Act relating to appeal and revision shall apply to an order or rectification made under this section as they apply to the order in respect of which such order of rectification has been made.''

11. Thus, if an application for review is dismissed, the party aggrieved cannot be left without remedy to file an appeal against the original judgement/decreed review of which was pursued bona-fide but unsuccessfully.

12. Under those circumstances, an appellate remedy would be still available and the delay on account of pendency of review petition, is to be excluded under Section 14 of the Limitation Act 1963 which provided such remedy was pursued bona fide.

13. If, on the other hand, if there was a review of the original judgement/decree/order, latter stands substituted by a new judgement/ decree / order of the court or Authority reviewing / rectifying such judgment orders. Appellate remedy lies against such judgment/decree which reviews the earlier judgment/decree.

14. Same principle will apply in the case of review under section 84 of the Tamil Nadu Value-Added Tax Act, 2006. Thus, if a review application was dismissed, the petitioner would have been entitled to file a statutory appeal against the original order of assessment and pray for exclusion of time taken in pursuing the application under section 84 by virtue of Section 14 of the Limitation Act, 1963 while preferring an appeal under section 51/52 of the Tamil Nadu Value-Added Tax Act, 2006.

15. On the other hand, if the order, passed originally stands substituted by another order under section 84 of the Tamil Nadu Value-Added Tax Act, 2006, as in the present case, appellate remedy cannot disallowed. It can be appealed before the Appellate Commissioner under section 51/52 of the Tamil Nadu Value-Added Tax Act, 2006 as a fresh period of limitation



would commence for appeal from passing of the order under review. Once an assessment order is rectified, the remedy to file an appeal against such assessment order cannot be denied.

16. Therefore, the memo returning of the appeal filed by the petitioner under Sections 51 / 52 of TNVAT Act, 2006 cannot be sustained.

17. Therefore, there is no merits in the impugned return memos of the office of the 1st respondent. The petitioner was well within his rights to have filed an appeal against the order/s dated 29.4.2021.

18. In the light of the above discussion, the impugned communications are quashed. The office of the 1st respondent is directed to number the appeal and list the appeals for final hearing before the 1st respondent to pass orders on merit and in accordance with law.

19. Considering the fact that the dispute pertains to the Assessment Years 2013-14 and 2014-15, the 1st respondent shall endeavor to dispose the appeals within a period of three months from the date of receipt of a copy of this order. Before passing such order, the petitioner shall be heard either in person or through his authorised representative physically or video conferencing.

20. Accordingly, the Writ petitions stand allowed as prayed for with a consequential direction. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ssn
To

1. The Appellate Deputy Commissioner (ST),
Salem Camp Office, Coimbatore.
2. The State Tax Officer,
Town Circle, Attur.

W.P.Nos.18553 and 18557 of 2021
and
W.M.P.Nos.19795 and 19798 of 2021

KSM(CO)
A.SK(13.12.2021)