BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3650 of 2011
and
M.P.(MD)No.1 of 2011

M/s.Taher Ali Industries and Projects Private Ltd.,
Rep. by its Power of Attorney Holder,
Mohd. Fakruddin ... Petitioner

Vs.

1.The Commercial Tax Officer-II,
Commercial Taxes Building,
Sachidananda Moopanar Road,
Thanjavur-613 007.

2.The Assistant Commissioner (CT),
Thanjavur-II. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records in proceedings No.TNGST:3822324/2001-02, dated 18.03.2011 on the file of the 2nd respondent, quash the same and direct the 1st respondent to dispose of the rectification petition under Section 55 of the TNGST Act, dated 23.10.2008, filed by the petitioner, after hearing the petitioner and in accordance with law.

For Petitioner : Mr.A.Chandrasekaran

For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader.

ORDER

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

2.The writ petitioner registered themselves as dealer with the respondents. The petitioner was awarded contract by TWAD Board during the year 2000-2001. The petitioner's specific case is that they reached taxable turn over only in February 2002. The petitioner wanted to make payment of tax at compounded rates in terms of Section 7-C of the Tamil Nadu General Sales Tax Act, 1959. While filing the returns for the taxable turn over reported in February 2002, the first monthly return was filed on 07.03.2002. The petitioner also opted to come under the compounding scheme under Section 7-C of the Tamil Nadu General Sales Tax Act, 1959. It appears that thereafter the petitioner filed nil returns for the period from April 2001 to January 2002. This was done on 25.03.2002.

3.According to the authority, the act of the petitioner fell foul of 7-C of the Tamil Nadu General Sales Tax Act, 1959. They chose to levy tax under the regular provisions namely., under Section 3-B of the Act. Aggrieved by the same, the petitioner resorted to every legal remedy under the sun. It appears that the petitioner was not successful any where. The appeal filed by the petitioner before the appellate authority was dismissed.

4.Finally the petitioner filed rectification petition under Section 55 of the Act before the assessing authority. The said rectification petition was rejected by the impugned order. Questioning the same, this writ petition came to be filed.

5.The learned counsel for the petitioner reiterated the contentions set out in the affidavit filed in support of the writ petition and wanted this Court to interfere with the impugned order.

6.Per contra, the learned Special Government Pleader took me through the averments in the counter affidavit and drew my attention to the order dated 10.02.2011 made in W.P.(MD)No.11911 of 2008. The learned Special Government Pleader wanted me to sustain the impugned order, in view of the same.

7.To answer the issue raised in the writ petition, it is necessary to extract Section 55 of the Tamil Nadu General Sales Tax Act, 1959. The said provision reads as follows:-

> "***Section 55 Power to rectify any error apparent on the face of the record.*** - ***(1)*** *An assessing authority or an appellate or revising authority (including the Appellate Tribunal) may, at any time within [five years] from the date of any order passed by it, rectify any error apparent on the face of the record;*
>
> *Provided that no such rectification which has the effect of enhancing an assessment or any penalty shall be made unless such authority has given notice to the dealer and has allowed him a reasonable opportunity of being heard.*

> ***Section 55(2)*** *Where such rectification has the effect of reducing an assessment or penalty, the assessing authority shall make any refund which may be due to the dealer.*
>
> ***Section 55(3)*** *Where any such rectification has the effect of enhancing an assessment or penalty, the assessing authority shall give the dealer a revised notice of assessment or penalty and the thereupon the provisions of this Act and the rules made thereunder shall apply as if such notice had been given in the first instance.*
>
> ***Section 55(3-A)*** *The powers under sub-section (1) may be exercised by the assessing authorities even though the original order of assessment, if any, passed in the matter has been the subject - matter of an appeal or revision.*
>
> Section 55(4) The provisions of this Act relating to appeal and revision shall apply to an order of rectification made under this section as they apply to the order in respect of which such order of rectification has been made."

8.As rightly pointed out by the learned counsel for the petitioner, Section 55(3-A) of the Act categorically states that the power of rectification can be exercised by the assessing authority even though the original order of assessment was subject matter of an appeal or revision. It is true that the appeal filed by the petitioner was dismissed and the same was also confirmed. It appears that the order passed by the appellate authority dismissing the rectification petition was also confirmed.

9.That again will not come in the way of Section 55(3-A) of the Act from having its statutory effect. Notwithstanding any of the adverse orders, which the petitioner suffered, the original assessing authority can still exercise the power of rectification, since such a jurisdiction has been specifically conferred under the aforesaid provision. In the case on hand, the assessing authority has declined to exercise her jurisdiction by citing the earlier orders. This in my view amounts to abdication of the statutory jurisdiction vested in her. In this view of the matter, the order impugned in the writ petition is set aside and the matter is remitted to the file of the second respondent to pass orders afresh in accordance with law. Of course, the second respondent will afford an opportunity of hearing to the petitioner herein before passing the final orders. It is open to the petitioner herein to point out the apparent errors which according to the petitioner, the original order is suffering from.

10.The writ petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AD I)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Commercial Tax Officer-II,
Commercial Taxes Building,
Sachidananda Moopanar Road,
Thanjavur-613 007.

2.The Assistant Commissioner (CT),
Thanjavur-II.

+1 CC to Mr.A.CHANDRA SEKARAN, Advocate (SR-3564[F] dated 05/02/2021)

+1 CC to SGP (SR-3548[F] dated 05/02/2021)

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