BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.08.2021
CORAM:
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
W.P.[MD]No.3454 of 2020
and
W.M.P.[MD]No.2909 of 2020

Tvl.Sri Jaya Jothi Cop., Ltd.,
Represented by its General Manager D.Venkatesan,
Alagainagar,
Malayadipatti, Rajapalayam. ... Petitioner

Vs.

The Assistant Commissioner (CT-II),
Commercial Tax Building,
Rajapalayam. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records in TIN 33176060461/2016-17 dated 07.06.2018 issued by the respondent in respect of interest alone and quash the same as arbitrary, illegal and against the principles of natural justice and against the proviso section 42(3) of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.N.Sudalaimuthu
For Respondent : Mr.R.Suresh Kumar
Government Advocate

O R D E R
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The prayer sought for herein is for a Writ of Certiorari, calling for the records in TIN 33176060461/2016-17 dated 07.06.2018 issued by the respondent in respect of interest alone and quash the same as arbitrary, illegal and against the principles of natural justice and against the proviso section 42(3) of the Tamil Nadu Value Added Tax Act, 2006, [hereinafter referred to as 'TNVAT Act'].

2.The petitioner is an assessee on the file of the respondent in TIN 33176060461, for the assessment year 2016-2017. The petitioner was deemed to have been assessed by accepting the returns filed by the petitioner under Section 22(2) of the TNVAT Act. Thereafter, on verification of the records, the respondent has reversed the input tax credit by adopting the formula method against consignment sales as per Section 19(5) of the TNVAT Act and exempted sales along with levy of interest under Section 42(3) of the Act vide proceedings dated 07.06.2018.

3.In this context, in order to rectify certain errors or mistakes, according to the petitioner, crept in the said order of assessment passed by the respondent, the petitioner had given a representation to the respondent on 18.03.2019, invoking Section 84 of the TNVAT Act. However, the said representation / application submitted by the petitioner under Section 84 of the TNVAT Act has been rejected through the impugned order of the respondent dated 07.06.2018, stating the reason that, as against the order of assessment, appeal should be filed within thirty days under the provisions of the TNVAT Act by the assessee. Instead, the assessee should not file any application under Section 84 of the TNVAT Act. Therefore, that kind of application cannot be entertained and accordingly, it is rejected. Aggrieved over the same, the present writ petition is filed.

4.Reiterating the aforesaid factual aspects, learned Counsel for the petitioner would invite the attention of this Court that, as per the language used in Section 84 of the TNVAT Act, which deals with the power to rectify any error apparent on the face of the record, such kind of application can be filed by the assessee at any stage, either before the Assessing Authority or before the Appellate Authority and therefore, when such an application is filed to rectify the error apparent on the face of the records, the same should have been entertained and decided on merits. Instead, since the respondent has rejected the application stating that such kind of application cannot be entertained and that the assessee petitioner should have filed an appeal, it cannot be sustained, as that reason would run contra to the scope of Section 84 of the TNVAT Act. Therefore, the said reason stated by the respondent, since is not sustainable, the said order is liable to be interfered with, he contended.

5.On the other hand, learned Government Advocate appearing for the respondent would submit that, if at all the petitioner has got any grievance over the assessment order passed by the respondent, he can very well file an appeal under the Act. When such appeal remedy is available, instead of invoking the appeal provision, the petitioner has filed an application under Section 84 of the Act, knowing well that there has been no apparent error on the face of the record. Therefore, the respondent has given the said reason and rejected the plea raised by the petitioner under Section 84, as the case is not entertainable under Section 84 of the Act. Therefore, the reason given by the respondent is to be sustained and the impugned order can be very well upheld and the petitioner can be advised to file an appeal.

6.I have considered the rival submissions of the learned Counsels and I have perused the materials placed before this Court.

7.As has been rightly pointed out by the learned Counsel for the petitioner, the language used in Section 84 of the TNVAT Act has made it clear that, either an Assessing Authority or a Revising

Authority, 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.

8.Here, in the case in hand, within five [5] years, since the application has been filed on 18.03.2019, under Section 84 of the TNVAT Act, on the ground that there has been an error apparent on the face of the record, the assessing authority should have entertained the application on merits and should have decided the matter. However, without going into the merits of the case, since it has been outrightly rejected on the ground that the petitioner could have filed an appeal before the assessing authority, this Court feels that the said reason cited in the impugned order cannot be countenanced and accepted. Therefore, the impugned order is liable to be interfered with.

9.Hence, this Court is inclined to pass the following order:

> "the impugned order is set aside and remanded back to the respondent for re-consideration. While reconsidering the same, the petitioner's application dated 18.03.2019, shall be considered strictly in accordance with the provisions of Section 84 of the TNVAT Act and orders shall be passed on merits, within a period of eight [8] weeks from the date of receipt of a copy of this order."

10.With the above observations and direction, this Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MR

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

The Assistant Commissioner (CT-II),
Commercial Tax Building,
Rajapalayam.

+1 CC to M/s.GP (SR-25485[F] dated 06/08/2021)

W.P.[MD]No.3454 of 2020
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MGJ(25.08.2021) 4P 3C