BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **29.06.2021**
CORAM
**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**
**W.P(MD)No.10712 of 2021**

S.Vaithiyanathan ... Petitioner

Vs.

The State Tax Officer,
(Previously known as Commercial Tax Officer),
Thiruppathur. ... Respondent

**PRAYER:** Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent to consider the representation, dated 07.11.2018 and 26.04.2021 within stipulated period as may be fixed by this Court.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.P.Thilak Kumar
Govt.Advocate

**O R D E R**

This Writ Petition has been filed praying for issuance of a Writ of Mandamus, to direct the respondent to consider the representations of the petitioner, dated 07.11.2018 and 26.04.2021.

2. The case of the petitioner is that the petitioner is a works contractor and was an assessee under the file of the respondent holding TIN 33375503183, under the erstwhile Tamilnadu Value Added Tax Act. The respondent had issued a Notice in TIN33375503183/2014-15, dated 06.04.2016, under Section 22(4) of the TNVAT Act stating that (i) He ought to have filed his return through E-filing within prescribed time but failed to do so (ii) Verification of the details of purchase as per dealer profile, he had purchased goods for Rs.7,38,000/- and paid tax of Rs.36,900/-. In the absence of return and other evidences, the respondent proposed to estimate the sales suppression as Rs.8,69,438/- by adding freight and gross profit along with equal addition and penalty under Section 22(5) of the TNVAT Act.

3. The learned counsel appearing for the petitioner submits that on receipt of Notice, dated 06.04.2016, the petitioner had filed a detailed representation, dated 28.06.2016 with the copy of the Form I-1 annual return, profit and loss account, copies of the purchase bills etc., by clearly explaining the facts that he had effected purchase of only centering sheet and adjustable span and prop, which is only a capital goods for him and it is not purchased for sales. It is used for contract work or given for rent and hence, requested to drop the proposal. On filing the representation dated 28.06.2016 with records, the petitioner received further notice and had appeared in person and explained the nature of the case and as there was no sales of centering materials effected by him as wrongly presumed and therefore, requested the respondent to drop the proposal.

4. It is the further contention of the petitioner that even after receipt of the representation with records on 28.06.2016 to prove the fact that there was no sales effected by him, as presumed by the respondent, to his shock and surprise, the respondent had confirmed the proposal vide his proceedings in TIN33375503183/2014-15, dated 24.10.2018, by arbitrarily stating that "being a works contractor, he ought to have utilized those goods for execution of his contract work during 2014-15. In the absence of return and other evidences, the dealer is liable to be assessed to the best of judgment", which is bad in law. On receipt of the order dated 24.10.2018, as there was a mistake apparent on the face of the record, he had filed a representation, dated 07.11.2018, before the respondent by once again explaining the fact that the material purchased by him was only capital goods used while doing contract work. The goods purchased was therefore used for own purpose or let out for rent and never used for sales. The petitioner explained the fact that when the notice dated 06.04.2016 was issued, he had filed a detailed reply with records, dated 28.06.2016 and his predecessor officer had verified all the records and accepted the contention and assured of dropping the proposal. As the order has been now wrongly passed, the petitioner had requested the respondent to reopen the assessment under Section 84 of the TNVAT Act and pass a revised order by rectifying the defect.

5. Adding further, the learned counsel for the petitioner would submit that inspite of receiving the representation, dated 07.11.2018, as there was no response from the side of the respondent, he was forced to file another detailed representation, dated 14.10.2019, once again explaining the entire facts and also the errors committed while passing the revision order, dated 24.10.2018, by pointing out that he had not followed the guidelines / procedure for making best judgment assessment in circular issued on the basis of the recommendation of the Justice

Sri Ramanujam Committee in Circular in Acts cell - VI /37801/99, dated 25.08.1999, which is binding on the respondent and once again requested the respondent to reopen the assessment, to rectify the error apparent on the face of record under Section 84 of the TNVAT Act. The respondent, being a statutory authority, is expected to discharge statutory functions in accordance with Section 84 of the TNVAT Act. Since the respondent did not discharge his duty in accordance with the law, the petitioner had repeatedly approached the respondent in person and requested to consider his representation, dated 14.10.2019, filed under Section 84 of the TNVAT Act in accordance with law. The respondent till date has not responded to it. Hence, the present Writ Petition.

6. I have heard the learned counsels appearing on either side and perused the materials available on record.

7. Before adverting to the contentions raised by the learned counsel appearing on either side, it is worthwhile to refer Section 84 of the Tamil Nadu Value Added Tax Act, which reads as under:-

> “"Section 84 of the Tamil Nadu Value Added Tax Act deals with power to rectify any error apparent on the face of the record. Sub-Section (1) states that the Assessing Authority or an Appellate Authority or Revisional Authority including the 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.”

8. As per the power conferred under Section 84 of the TNVAT Act, the Assessing Authority has the power to rectify any error apparent on the face of the record. The said Section does not state that it is only pertaining to arithmetical errors or clerical errors. Though the provision states that it is a power for rectification, in effect, the language employed in the provision would confer a power on the Authority to review its decision, if there is error apparent on the face of the record.

9. In the light of the above, without adverting to the merits of the case, this Court directs the respondent to consider the representation of the petitioner dated 07.11.2018, after affording due opportunity of personal hearing to the petitioner, and to dispose of the same on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

10. With the above direction, this Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MPK

*Note*:(i) 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 State Tax Officer,
(Previously known as Commercial Tax Officer),
Thiruppathur.

+1 CC to M/s.S.KARUNAKAR, Advocate ( SR-20511[F] dated 29/06/2021 )

+1 CC to M/s.SPL GP ( SR-20742[F] dated 30/06/2021 )

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**29.06.2021**

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