



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.08.2021

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)Nos.13178 to 13184 of 2021 & 13189 of 2021

and

W.M.P (MD) .Nos.10188 to 10194 & 10201 of 2021

(Through Video Conference)

M/s.Jayamaruthi Wood Industry,
Represented by its Partner,
Mr.P.Suresh Patel

... Petitioner in all WP's

Vs.

1.The Joint Commissioner (ST),
Commercial Tax Building,
Madurai.

2.The Assistant Commissioner (ST),
Jaihindpuram Assessment Circle,
Madurai.

... Respondents in all WP's

Common Prayer: Writ Petitions filed by under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records in ROC Nos.A11/1800/2021, A11/1799/2021, A11/1802/2021, A11/1801/2021, A11/1804/2021, A11/1803/2021, A11/1805/2021, A11/1806/2021, dated 15.03.2021 respectively, issued by the first respondent and quash the same as illegal, arbitrary and further direct the first respondent to pass an order afresh after affording reasonable opportunity of being heard to the petitioner within such time as may be directed by this Honble Court.

In all cases:

For Petitioner : Mr.S.Karunakar

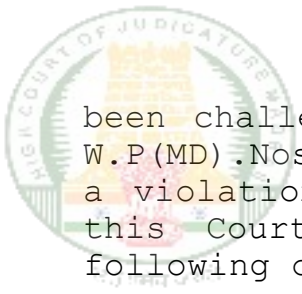
For Respondents : Mr.R.Sureshkumar

Government Advocate

COMMON ORDER

Since the petitioner in all these writ petitions is the same Assessee or dealer and the issue raised in all these writ petitions are one and the same in respect of various assessment years, by consent of the learned counsel appearing for both sides, all the writ petitions are heard together and are disposed of by this common order.

2.As against the petitioner in respect of assessment years 2008-2009 to 2014-2015 assessment orders have been passed by the second respondent, by order dated 20.06.2017. The said order had



been challenged by the petitioner in a batch of writ petitions in W.P(MD).Nos.2023 and 2029 of 2018 on the ground that there has been a violation of principles of natural justice. A learned Judge of this Court having entertained those writ petitions passed the following order by his order dated 06.02.2018 which reads thus:

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"2.The petitioner was issued with pre-revision notice. In response thereto, the petitioner submitted a letter seeking grant of further time. Without formally considering the said request for grant of further time, the respondent chose to pass the final order. The final orders are vitiated for not having afforded due opportunity to the petitioner. Since the final orders have clearly infringed the principles of natural justice, this Court is inclined to quash the same. The matters are however remitted to the file of the respondent with liberty to pass fresh orders after affording due opportunity to the petitioner.

3.With this liberty, these writ petitions stand allowed. No Costs. Consequently, connected miscellaneous petitions are closed."

3.Accordingly, the matters had been remitted back to the second respondent-assessing authority to re-assess and pass a fresh order. Accordingly, the issue had been reconsidered and fresh orders had been passed by the second respondent for each of the assessment year as referred to above by a series of the orders on 21.01.2020, where the earlier assessment order has been reiterated by the second respondent. Having aggrieved over the said batch of revised orders passed for various assessment years by the second respondent dated 21.01.2020, the petitioner could have filed an appeal before the appellate authority under Section 51 of the Tamil Nadu Value Added Tax Act, 2006, (hereinafter referred to as "the Act"), however, according to the petitioner, in the said revised orders passed by the assessing authority, ie., the second respondent, since there has been an apparent mistake occurred, in order to rectify the same, the petitioner having invoked Section 84 of the Act has given request/representation on 07.12.2020, separately for each of the assessment year.

4.However, the second respondent, instead of entertaining and deciding the said representation or request given by the petitioner separately for each of the assessment year under Section 84 of the Act for the purpose of rectifying the alleged mistake, had issued a notice dated 07.01.2021 in respect of all these cases separately, wherein the second respondent has simply stated that the petitioner had given explanation on 07.12.2020, which was received by the second respondent office on 09.12.2020 and in this context, since there has been provision available under the Act, especially under Section 51 to file appeal to the appellate Deputy Commissioner r/w



Rule 14 of the Rules made thereunder, the petitioner/dealer should have filed an appeal against the revised assessment order dated 21.01.2020, instead, since he has given a representation, such kind of representation cannot be entertained, therefore in the said notice dated 07.01.2021, the second respondent directed or advised the petitioner dealer to file an appeal. Though it has been styled as notice, such a conclusive order has been passed thereby giving advise to the petitioner to prefer regular appeal against the revised assessment order dated 21.01.2020.

5. Having receipt of the said notice/order dated 07.01.2021, the petitioner having found any appeal provision against such order/notice dated 07.01.2021 has invoked the revisional power of the joint commissioner concerned under Section 54 of the Act and filed revisions before the first respondent on 04.03.2021 separately, in respect of each of the assessment order. Those revision petitions filed dated 04.03.2021 separately, for each of the assessment year referred to above, by the petitioner, had been rejected by separate orders passed by the first respondent dated 15.03.2021, wherein the first respondent, by stating the following, has rejected the said revision:

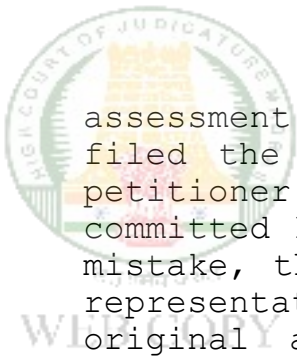
"The Dealer has filed the Revision Petition against the "Notice" issued by the Assistant Commissioner (ST), Jaihindpuram Circle, Madurai. According to Section 51 and 52 of the Act, any person objecting to an order passed by the assessing authority u/s.24,27,28,29,34 and 40 of the Act can only file appeal before the Appellate Deputy Commissioner (ST) having jurisdiction.

According to Section 54 of the Act, any person objecting to any order passed or Proceedings for which an appeal has not been provided for in Section 51 and 52, may file an application for Revision Petition, before the Joint Commissioner (ST) having Jurisdiction.

In this Revision Petition the dealer has objected the notice issued by the Assessing Officer only and not against any Proceedings or order of the Assessing Officer. Hence, according to Section 54, a notice issued by the Assessing Officer cannot be objected in the Revision Petition. Hence, the Revision Petition is **"dismissed"** on this score."

6. Aggrieved over the said rejection order now made by the first respondent dated 15.03.2021, the present batch of writ petitions had been filed by the petitioner with the aforesaid prayer.

7. I have heard Mr.K.Karunakar, learned counsel for the petitioner, who would submit that, as against the revised order of



assessment dated 21.01.2020 eventhough, the petitioner could have filed the regular appeal under Section 51 of the Act, since the petitioner felt that there has been a apparent error or mistake committed by the assessing authority, in order to rectify the said mistake, the petitioner by invoking Section 84 of the Act has given representation/application to the second respondent, that is, the original assessing authority on 07.12.2020. Therefore the same should have been considered and decided on merits, instead, in the form of notice, the second respondent has simply advised the petitioner to file an appeal, as against the said order in the form of notices dated 07.01.2021 and 08.01.2021, since the petitioner has no other option except to file revision under Section 54, such of those revisions had been filed and therefore, the said revisions should have been considered and decided on merits by the first respondent, instead, the first respondent has erroneously dismissed all those revisions filed by the petitioner, therefore, those orders passed by the first respondent dated 15.03.2021 invariably in all these writ petitions are liable to be interfered with, he contended.

8.Per contra, Mr.R.Sureshkumar, learned Government Advocate appearing for the respondents on instructions, would submit that already the assessment order had been passed on 20.06.2017, however as against which if at all the petitioner has got aggrieved, he could have file an appeal under Section 51 of the Act, but he had, instead, filed writ petitions before this Court where a remand order has been passed by this Court on 06.02.2018 pursuant to which, the issue had been reassessed or reconsidered and after reconsideration, the second respondent-assessing authority has come to the conclusion that what has been passed in the earlier assessment order can be reiterated, accordingly, reiterating the same, the revised assessment orders had been passed on 21.01.2020. He would further submit that as against the said revised assessment orders, appeal could have been filed by the petitioner to the appellate authority, instead, the petitioner had given only a representation to the original authority, that is, the second respondent on 07.12.2020, therefore, on considering the same, the original authority, that is, the second respondent has advised the petitioner to prefer a regular appeal if he has got aggrieved over the revised assessment order. Therefore the learned Government Advocate would submit that the petitioner could have filed regular appeal against the revised assessment order, instead, he had chosen to challenge the said advise ofcourse in the form of notice given by the second respondent, by way of revision under Section 54 of the Act before the first respondent. Hence, the first respondent has taken a view that as against the revised assessment order only appeal could have been filed by the petitioner instead, the revision ought not to have been filed therefore, on that ground, revision filed by the petitioner had been rejected through the impugned order by the first respondent. Hence, the learned Government Advocate wants to sustain these orders and seeks dismissal of these writ petitions.



9.I have considered these rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

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10.Insofar as the assessment order originally passed by the second respondent for various assessment years referred to above dated 20.06.2017 is concerned, those orders were set aside and the matters were remanded back to the second respondent for reconsideration by the orders of this Court dated 06.02.2018 as referred to above.

11.Accordingly, the second respondent assessing authority, after reconsideration, passed a revised assessment order on 21.01.2020 in all these cases. As against those orders, if the petitioner has got aggrieved, no doubt, he can prefer an appeal under Section 51 of the Act, however, in the case in hand, it is the case of the petitioner that some apparent error occurred in the order of revised assessment passed by the second respondent dated 21.01.2020. Therefore, in such case, the petitioner can very well invoke the power vest with the authorities to rectify the mistake under Section 84 of the Act.

"Section 84 of the Act reads thus:

"84. (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 reasonable opportunity of being heard.

(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.

(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 thereupon the provisions of this Act and the rules made thereunder shall apply as if such notice had been given in the first instance.

(4) 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.

(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."

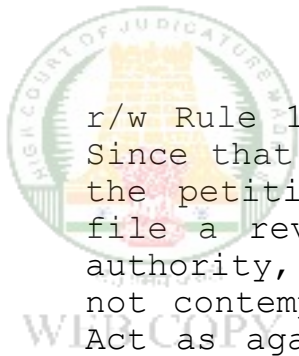
such kind of power to rectify any error apparent on the face of the record is vested with not only the assessing authority but also to the appellate as well as the revising authority including the appellate tribunal. Whether any such error apparently available on the face of the record, has to be ascertained and decided only by the assessing authority or the appellate authority or the revising authority as the case may be, when such application under Section 84 is filed by the Assessee, once such application is filed the same should be disposed of in the manner as has been provided under Section 84 of the Act. Here in the case in hand, such invocation has been made by the petitioner under Section 84 of the Act and accordingly, when he filed an application by way of representation dated 07.12.2020, where, he has specifically stated that the case should be finally considered and a revised order, under Section 84 of the Act, by rectifying the mistakes committed, by passing the assessment order at an very earliest date, can be passed.

12.When such a request having been made specifically by the petitioner by invoking Section 84 of the Act, certainly such representation should have been disposed of in the manner known to law, especially in the context of Section 84 of the Act and not otherwise.

13.Law is well settled in this regard that if a statute prescribes that a particular action has to be done only in the particular manner as provided under the statute, the same shall be carried out only in that manner not otherwise.

14.Here, in the case in hand, Section 84 has made it clear that not only the assessing authority but also, the appellate as well as the revising authority is vested with the power to rectify the mistakes, if any, which is pointed out by the Assessee at any point of time within 5 years period to rectify such mistakes and pass orders and if no such mistakes is occurred, the application or representation submitted in this regard invoking Section 84 should have been disposed.

15.Here in the case in hand, the second respondent, assessing authority before whom such representation under Section 84 of the Act was made on 07.12.2020 by the petitioner, the same should have been disposed only under the said section, however, the second respondent instead, has issued a notice on 07.01.2021, wherein no show cause or anything has been asked for from the petitioner, but an advisory was given by the second respondent to the petitioner to file an appeal that is regular appeal under Section 51 of the Act



r/w Rule 14 of the Rules as against the revised assessment order. Since that order in the name of notice has been passed and served on the petitioner, the petitioner having no other option, except to file a revision before the first respondent, who is the revising authority, by invoking Section 54 of the Act because, the Act does not contemplate any regular appeal under Sections 51 and 52 of the Act as against the order passed by way of notice pursuant to the application submitted by the Assessee under Section 84 of the Act.

16.Therefore, this Court cannot find fault with the petitioner in preferring a revision before the first respondent.

17.However, before filing the revision, even at the hands of the assessing authority, that is the respondent, there has been a mistake, as he has not disposed Section 84 application dated 07.12.2020, instead, he has issued only an advisory by way of notice on 07.01.2021 to the petitioner. In the considered opinion of this Court, in view of the various provisions as discussed hereinabove, such course of action ought not to have been taken by the second respondent while disposing an application filed under Section 84 of the Act. Therefore, this Court feel that the orders, which are impugned herein passed by the first respondent dated 15.03.2021 as well as the notice dated 07.01.2021 advising the petitioner to file a regular appeal against the revised assessment order cannot stand in the legal scrutiny, therefore, both the orders passed by the first and second respondent are liable to be interfered with by this Court.

18.In that view of the matter this Court is inclined to dispose of all these writ petitions with the following directions:

"that the impugned orders passed in these writ petitions by the first respondent as well as the order against which such revision was filed by the petitioner that is the order by way of notice dated 07.01.2021 passed in all these cases by the second respondent are hereby quashed. The matter is now remitted back at the stage of Section 84 application dated 07.12.2020 submitted by the petitioner in each of the case to the second respondent, assessing authority, who is hereby directed to consider the said Section 84 application dated 07.12.2020 of the petitioner on merits and in accordance with law and pass orders thereon within a period of thirty days from the date of receipt of a copy of this order."

19.It is needless to mention that once an order is passed accepting or rejecting the plea of the petitioner raised under Section 84 of the Act to his representation dated 07.12.2020, it is open to the petitioner to work out his remedy depending upon the outcome of the orders to be passed in this regard.



20. With these directions, all these writ petitions are disposed of. However, there shall be no orders as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Joint Commissioner (ST),
Commercial Tax Building,
Madurai.

2. The Assistant Commissioner (ST),
Jaihindpuram Assessment Circle,
Madurai.

+1 CC to M/s. Special Government Pleader (SR-25370[F] & SR-25371[F]
dated 05/08/2021)

+2 CC to M/s. S. KARUNAKAR, Advocate (SR-25301[F] & SR-25300[F] dated
05/08/2021)

W.P. (MD) Nos. 13178 to 13184 of 2021
& 13189 of 2021

04.08.2021

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