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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.08.2021**

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.13185 of 2021

Tvl.Indian Steel Trading Corporation,
represented by its Partner R.S.Sathish Kumar,
39, West Masi Street,
Madurai. ... Petitioner

Vs.

The State Tax Officer,
West Tower Street Assessment Circle,
Madurai. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondent to consider the representation dated 06.01.2020 within stipulated period.

For Petitioner : Mr.N.Sudalaimuthu for Mr.S.Karunakar

For Respondent : Mr.R.Sureshkumar Government Advocate (civil side)

ORDER

The prayer sought for herein is for a Writ of Mandamus, directing the respondent to consider the representation, dated 06.01.2020, within stipulated period.

2.The petitioner is a dealer in Hardware Materials and an assessee under the files of the respondent holding TIN No.33134802102 under the erstwhile Tamil Nadu Value Added Tax, 2006 [hereinafter referred to as "TNVAT Act" in short].

3.The petitioner was originally assessed under the self assessment basis under Section 22(2) of the TNVAT Act by accepting the returns. Subsequently, it seems that at verification of returns, based on certain defects, the respondent had issued a notice dated 17.05.2018 stating certain reasons. Pursuant to the notice, the petitioner had given a reply on 26.05.2018 putting forth the defence to be taken in that regard.

4.However, the respondent, by order dated 19.12.2018 having rejected the said defence or reply given on behalf of the

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assessee/petitioner has passed an order, thereby making a demand to pay the additional tax under the TNVAT Act.

5.In this context, it is the case of the petitioner that though the entire liability had been settled and the tax had been paid, infact, according to the petitioner, there has been excess payment of Rs.310/-, which has not been properly taken into account by the revenue, while passing the order dated 19.12.2018 and in this regard, according to the petitioner, reply given by the petitioner dated 26.05.2018 was not properly considered.

6.Only in this context, it is the further case of the petitioner that in view of the alleged error found apparently on the face of the record, the petitioner had given a representation on 06.01.2020 to the revenue, that is the original assessing authority, respondent herein, to rectify the same under Section 84 of the TNVAT Act. In the said representation, the petitioner had given reasons as to why the order already passed by the assessing authority dated 19.12.2018 has to be revisited and the error which according to the petitioner found in the said order has to be rectified.

7.Despite the said representation having been given seeking the action on the part of the respondent revenue to decide the same under Section 84 of the TNVAT Act, since no action had been taken and nothing was forthcoming from the respondent, the petitioner has moved this writ petition with the aforesaid prayer.

8.Heard the learned counsel for the petitioner, having reiterated the aforesaid, he would seek indulgence of this Court to issue Writ of Mandamus to the respondent to consider the representation of the petitioner under Section 84 of the TNVAT Act and decide the same, after giving an opportunity of being heard to the petitioner within a timeframe that may be stipulated by this Court.

9.Heard Mr.R.Sureshkumar, learned Government Advocate (Civil) appearing for the respondent, who on the other hand would submit that as against the order passed by the assessing authority, the petitioner has got an appeal remedy under the provisions of the TNVAT Act, which should be filed within thirty days time. Within the said time of limitation, no appeal seems to have been filed by the petitioner and in order to overcome such non-filing of the appeal within the time, the petitioner has moved this application seeking the relief under Section 84 of the TNVAT Act, which the petitioner cannot avail as he should have filed regular appeal as against the original order passed by the aseessing authority.

10. The Learned Government Advocate would also contend that prayer sought for seeking Mandamus to respondent to consider the application / representation submitted by the petitioner dated

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06.01.2020 filed under Section 84 of the TNVAT Act does not deserve to be considered. Therefore, the same is liable to be rejected, he contended.

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

12. Section 84(1) of the TNVAT Act has made it clear that the assessing authority 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.

13. Sub-Section (4) of Section 84 of the TNVAT Act makes it clear that the power 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. Therefore, on the combined reading of Sub-Section (1) and (4) of Section 84 of the TNVAT Act, it has become clear that the assessing authority is empowered to or liable to consider any application submitted in this regard to rectify any error apparent on the face of the record, within five years period from the date of original order.

14. Whether any error apparent on the face of the record or not has to be decided only by the assessing authority and in this regard, whatever be the details given by the assessee shall be taken into account by the assessing authority and decide the same on merits.

15. In this context, since Sub-Section (4) of Section 84 of the TNVAT Act has made it clear that even if the appeal / revision has been filed or pending, that will not preclude the power vested in the assessing authority to decide any such application be moved by the assessee to be considered under Section 84 of the TNVAT Act.

16. Therefore, the objection raised by the learned Government Advocate appearing for the respondent that without exhausting appeal remedy as against the original order / assessment order passed by the assessing authority, since the petitioner has invoked the provision under Section 84 of the TNVAT Act, the same cannot be entertained, in the considered view of this Court, will not be sustainable and cannot be countenanced. Therefore, this Court feels that the plea raised by the petitioner for the simple prayer of mandamus to consider his request dated 06.01.2020 under Section 84 of the TNVAT Act, on merits by the assessing authority can very well be considered and accordingly, this Court is inclined to pass the following order:

that there shall be a direction to the

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respondent to consider the representation / application of the petitioner dated 06.01.2020 submitted under Section 84 (1) of the TNVAT Act and decide the same on merits and in accordance with law, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

17. It is made clear that before passing final order as indicated above under Section 84(1) of the TNVAT Act, the respondent shall give an opportunity of being heard to the petitioner and after assessing and evaluating the details to be supplied in this regard by the petitioner/assessee, needful as indicted shall be undertaken by the respondent.

18. With these directions, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (Records)

// 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

The State Tax Officer,
West Tower Street Assessment Circle,
Madurai.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-25096[F] dated 03/08/2021)

+1 CC to M/s.GP (SR-25075[F] dated 03/08/2021)

W.P.(MD)No.13185 of 2021
Dated:
02.08.2021

MGJ(19.08.2021) 4P 4C

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