BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.09.2021
CORAM
THE HON'BLE MR.JUSTICE R.SURESH KUMAR
W.P.(MD)No.17168 of 2021
and
W.M.P(MD)No.14060 of 2021

M/s.Anbu Agencies,
Rep. by its Proprietor
G.Anbalagan .. Petitioner

Vs.

The Commercial Tax Officer,
Presently designated as
The State Tax Officer,
Kumbakonam (Rural) Circle,
Kumbakonam. ..Respondent

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in TIN No.33703982381/2014-15, dated 17.08.2021 and quash the same as it is unlawful and invalid and further direct the respondent to consider the rectification petition, dated 09-04-2021, and pass appropriate orders in all perspective on its merits after providing an opportunity of personal hearing in accordance with the Section 84 of the TNVAT Act.

For Petitioner : Mr.R.D.Ganesan
For Respondents : Mr.R.Sureshkumar
Government Advocate

ORDER

Prayer sought for herein is for a Writ of Certiorarified Mandamus, to call for the records of the respondent in TIN No.33703982381/2014-15, dated 17.08.2021 and quash the same as it is unlawful and invalid and further direct the respondent to consider the rectification petition, dated 09-04-2021, and pass appropriate orders in all perspective on its merits after providing an opportunity of personal hearing in accordance with Section 84 of the TNVAT Act.

2.Insofar as the Assessment Year 2014-15 is concerned, after having the reversal of ITC, an assessment order, dated 31.01.2020, was passed by the respondent against the petitioner.

3.On seeing that order, the petitioner has noticed that the ITC reversed to the extent of Rs.66,362/- has already been done, and therefore, the equal amount shall be taken, as if that, the tax has been paid, therefore, the question of revised ITC of the said amount does not arise. Hence, according to the petitioner, it is an error apparent on the face of the record, therefore it has to be rectified.

4.In order to rectify the same, the petitioner filed a rectification petition on 09.04.2021, under Section 84 of the TNVAT Act (in short 'the Act'), however, the said rectification petition has been rejected through the impugned order, dated 17.08.2021. Aggrieved over the same, the present writ petition has been filed.

5.Heard Mr.R.D.Ganesan, learned counsel appearing for the petitioner, who has taken this Court to the reason cited by the respondent in rejecting the plea of the petitioner in the application filed under Section 84 of the Act, through the impugned order, dated 17.08.2021.

6.It seems that the petitioner claimed that the ITC to the extent of Rs.66,362/- already been reversed on purchase in Form-1 return. Therefore, the revised ITC amount of purchase has to be taken on tax paid amount for computing balance amount under VAT in the revision order, dated 31.01.2020, however, since the same has not been taken into account, it was pointed out by the petitioner, through his application under Section 84 of the Act, as referred to above, however, the same has been rejected by the respondent, by citing the reason that, when a notice, dated 19.10.2020 was issued as a pre-revision notice, the same has not been responded and the dealer/petitioner did not even appear before the respondent, and therefore, by taking into account the available records, the order of assessment has been passed on 31.01.2020, therefore, at this juncture, there is no question of any error apparent on the face of the record in the said assessment order, therefore, on that ground, the petition filed under Section 84 of the Act, by the petitioner/dealer need not be entertained or accepted, therefore, it was rejected.

7.The said reason cited by the respondent in the order impugned, according to the learned counsel for the petitioner, is an untenable reason, therefore, on that ground, he seeks indulgence of this Court to interfere with the impugned order.

8.Per contra, Mr.R.Suresh Kumar, learned Government Advocate appearing for the respondent, would submit that, when pre-revision notice was issued on 19.10.2020, it is duty-bound on the part of the petitioner to appear or to give a reply to the respondent, as the petitioner had neither chosen to give any reply nor appear before the respondent, he had no other option except to proceed and finalise the assessment order, based on the available records, thereby, the ITC was reversed by the assessment order, dated 31.01.2020.

9.When that being so, the present reason stated in the Section 84 application is a fresh issue, which has been brought to the notice of the respondent, therefore, it cannot be stated that there has been an apparent error occurred on the face of the record in the said assessment order, dated 31.01.2020, therefore, on that ground, the reason cited by the respondent in rejecting the Section 84 application of the petitioner is justifiable, he contended.

10. That apart, the learned Government Advocate would also urge the point that, as against the order impugned herein, there is an appeal provided under Section 54 of the TNVAT Act, therefore, without exhausting the same, the petitioner ought not to have invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, therefore, on that ground also, the learned Government Advocate seeks dismissal of this writ petition.

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. No doubt, pursuant to the notice, dated 19.10.2020, the petitioner did not appear or has not given any reply, therefore, we cannot find fault with the assessing officer, who has reversed the assessment and has passed the order in this regard, which he has passed on 31.01.2020. However, on receipt of the same, the petitioner had come to know that there has been an apparent error on the face of the record, where the ITC to the extent of Rs.66,382/- had already been reversed and therefore, the question of paying any tax does not arise as the said reversal of ITC should have been taken, as if that, the tax has been paid.

13. Definitely this may be one of an apparent error on the face of the record, however, the same could have been brought to the notice of the respondent by the petitioner on the earlier occasion, when notice was issued, but he has failed to do so.

14. Nevertheless, once an application is filed under Section 84 of the Act, in view of the said Section, under which, within five years at any stage from the date of assessment, such kind of application can be filed to rectify the error apparently available on the face of the record, such kind of application can very well be entertained on merits, and should have been decided accordingly.

15. In this context, the reason stated by the respondent in the impugned order, on perusal, cannot be sustained, as on merits he has not given any reason, as to why, he has not taken into account the reversal already made against the ITC to the extent of Rs.66,362/-.

16. Insofar as the said plea raised by the learned Government Advocate with regard to the Section 54 appeal is concerned, this Court is of the view that since Section 84 application itself is a rectification application, where the reason cited by the respondent is apparently untenable, therefore, on that ground, this Court can entertain this writ petition and dispose of the same. Hence, the petitioner, at this stage, need not be relegated to prefer an appeal under Section 54 of the Act. Therefore, this Court feel that the impugned order is liable to be interfered with.

17. In the result, the impugned order is set aside and the matter is remitted back to the respondent for reconsideration, while reconsidering the same, whatever the input already been provided by the petitioner by way of reply or by way of Section 84 application, and also if any further input, the petitioner wants to supply, that can also be supplied in addition to Section 84 application, and on receipt of which considering the same including a personal hearing, if such need arises, the respondent shall consider those aspects and pass an order thereon by disposing of Section 84 application, on merits and in accordance with law, as early as possible.

18. With these directions, this writ petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Per.Admn)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

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 Commercial Tax Officer,
Presently designated as
The State Tax Officer,
Kumbakonam (Rural) Circle, Kumbakonam.

+1 CC to M/s.R.D.GANESAN, Advocate (SR-30070[F] dated 23/09/2021)
+1 CC to M/s.SPL. GP (SR-30000[F] dated 23/09/2021)

W.P.(MD) No.17168 of 2021
22.09.2021

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GC/UV(08.11.2021) 4P 4C