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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.8910 of 2019
and
W.M.P.No.9461 of 2019

Thangam Agencies
Rep.by its Proprietor, S.T.Thenuruvi
No.85/86, Sankari Road
Tiruchengode,
Namakkal District. …. Petitioner

-Vs-

The State Tax Officer
Tiruchengode (City) …. Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent in TIN No.33583183555/2009-10 to 2013-14-Na.Ka.No.1470/2017/A3 and quash the proceedings dated 27.02.2019 and further direct the respondent to consider the petition dated 08.10.2018 filed under Section 84 of the TNVAT Act filed by the petitioner.

For Petitioner : Mr.P.V.Sudhakar

For Respondent : Mr.N.R.R.Arun Natarajan
Special Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the respondent in TIN No.33583183555/2009-10 to 2013-14-Na.Ka.No.1470/2017/A3 and quash the proceedings dated 27.02.2019 and further direct the respondent to consider the petition dated 08.10.2018 filed under Section 84 of the TNVAT Act filed by the petitioner.

2. The petitioner is a dealer in cement and cement products and is registered with the respondent under the erstwhile Tamil Nadu Value Added Tax Act (In short 'TNVAT Act').

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The petitioner claims that, he regularly filed monthly returns and paid the taxes. There was an inspection by the Enforcement Wing officials on 03.11.2014 and 04.11.2014 at the petitioner premises and they alleged that, the petitioner has not filed monthly returns from February 2009 onwards. Based on the said proposal, a notice dated 31.12.2014 was issued. Thereafter, the petitioner had given a detailed reply and produced accounts and a copy of the manually prepared returns in Form-I. After verification of the returns, without giving an opportunity of personal hearing, the respondent passed the assessment order dated 10.03.2015. That was challenged in Writ proceedings before this Court and this Court directed the respondent to give a personal hearing.

3. Ultimately, the petitioner had filed an application for rectification petition for the five assessment orders from 2009-10 to 2013-14 under Section 84 of the Act on 08.10.2018. Detailed request has been made on behalf of the petitioner to rectify certain mistakes apparent on the face of the record and for the said purpose, Section 84 applications were filed.

4. Thereafter, it is the case of the petitioner that, on 04.02.2019, an order rectifying certain error has been passed by the Revenue only in respect of the assessment year 2010-11. However, it is the grievance of the petitioner that, in respect of the assessment year 2010-11, the rectification made through the order dated 04.02.2019 of the Revenue is not related to the rectification sought for by the petitioner through his application dated 08.10.2018, but on their own by the Revenue.

5. Be that as it may. Insofar as the other orders ie., for the years 2009-10, 2011-12, 2012-13 and 2013-14 are concerned, the Section 84 application dated 08.10.2018 has not all been considered and decided so far and it has been kept pending.

6. In this context, it is the further grievance of the petitioner that, when the Section 84 rectification application has been kept pending without deciding the same, the Revenue has proceeded to make a demand through the impugned communication dated 27.02.2019 for all the five assessment years ie., from 2009-10 to 2013-14. Challenging the same, the present writ petition has been filed.

7. Reiterating the aforesaid, the learned counsel for the petitioner would submit that, as per Section 84 of the TN VAT Act, such application can be filed by the dealer within six

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years the date of any order passed by any authority ie., the assessing authority or appellate authority or revising authority including the appellate tribunal, to rectify any error apparent on the face of the record.

8. When that being so, when such an application has been made by the petitioner / dealer on 08.10.2018, the same has not been decided and it has been kept pending. While so, the Revenue cannot proceed to make a demand for all the five years based on the original assessment without deciding the rectification application. Therefore, on that ground, the impugned demand made by the Revenue is vitiated. Therefore, it shall be set aside and a direction may be issued to the respondent to decide the Section 84 application at the earliest.

9. However, Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing for the respondents would submit that, though application under Section 84 filed for the alleged rectification for five years from 2009-10 to 2013-14, having considered the same, the Revenue has found certain rectification to be made only in respect of the assessment year 2010-11. Therefore, that rectification has been made by order dated 04.02.2019.

10. He would further submit that, insofar as other four years are concerned, no such rectification was required to be made. Therefore, for those years no rectification has been made. Hence, it cannot be stated that the application filed by the petitioner dated 08.10.2018 has not been considered and decided. Therefore, the learned Special Government Pleader would submit that, the Revenue is free to proceed by making a demand on the basis of the assessment made in respect of all the five years and the tax due with penalty can very well be demanded from the petitioner, which should have been paid by 25.09.2017 itself, and since the same has not been paid, the impugned demand has been made. Therefore, it does not require any interference from this Court, he contended.

11. I have considered the submissions made by the learned counsel for the parties and have perused the materials placed on record.

12. Section 84 of the TNVAT Act makes it clear that, within six years from the date of order of assessment made by either the assessing authority or appellate authority or revising authority, including appellate Tribunal, if the dealer / assessee finds certain error apparent on the face of the record, in order to rectify the same, a rectification

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application can be made.

13. If such application is made, that shall be considered and decided by either of these authorities before whom such application has been made under Section 84 and it shall be decided as to whether the rectification sought for by the dealer has to be made or such a request has to be rejected on merits. Here in the case in hand, admittedly there has been an application under Section 84 of the Act on 08.10.2018 and even though some rectification order has been passed on 04.02.2019, it has been specifically mentioned that, the said rectification under Section 84(1) of the Act is for the assessment year 2010-11.

14. That means, this rectification has been made only in respect of the assessment year 2010-11. Insofar as the other years are concerned, nothing has been stated in the said order and there is no whisper about the other years. Therefore, it can easily be construed that insofar as the other years are concerned, there has been no order passed on the application made by the petitioner under Section 84 of the Act either to rectify or not to rectify, as has been sought for by the petitioner.

15. Even in respect of the assessment year 2010-11, it is submitted by the learned counsel for the petitioner that, as per the reference made in the said order dated 04.02.2019, nothing has been stated about the application of the petitioner except the proceedings of the State Tax Officer dated 10.08.2017. Therefore, it was suo-motu decided by the concerned authority but not on the basis of the application of the petitioner dated 08.10.2018.

16. The said submission made by the learned counsel for the petitioner is appealing to this Court because, there has been no express order passed by the respondent Revenue either accepting or rejecting the claim made by the petitioner by the application dated 08.10.2018.

17. While the Section 84 application was pending consideration, without deciding the same by passing express order in this regard, the respondent Revenue cannot proceed further to make a demand on the original assessment. Therefore, this Court has no hesitation to hold that the present demand dated 27.02.2019 is infirm and therefore, it is liable to be interfered with.

18. In that view of the matter, this Court is inclined to

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dispose of this writ petition with the following order.

- The impugned demand order dated 27.02.2019 is set aside and the matter is remitted back to the respondent, who shall consider the rectification application submitted by the petitioner dated 08.10.2018 for all the five years from 2009-10 to 2013-14 and pass orders thereon on merits and in accordance with law.

- In this regard, if any further input is required to be received from the dealer / petitioner that can also be received and based on which, final orders on the Section 84 application shall be passed by the respondent within a period of six weeks from the date of receipt of a copy of this order.

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

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

KST

To

The State Tax Officer
Tiruchengode (City)

+1cc to Mr.B.Raveendran, Advocate SR.No.8395
+1cc to the Special Government Pleader(Taxes) SR.No.8200

W.P.No. 8910 of 2019

SV(CO)
GN(22/03/2022)