IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM :

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.1287 of 2023
and
W.M.P. No.1317 of 2023

Tvl Sri Ragava Medical and General Stores,
Rep. By its Proprietor Mr.Arivazhagan,
No.7,2,Ulundurpet Road,
Tiruvennainallur.[PO] – 607 203. .. Petitioner

vs

1.The Deputy Sales Tax Officer,
Thirukoilur Assessment Circle,
Thirukoilur.

2.The Commissioner of Commercial Taxes
Ezhilagham,
Chepauk, Chennai – 5. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling the records of the first respondent order in TIN33304762190/2013-2014 dated 14.11.2022 and direct the respondents to dispose the petitioner application dated 02.11.2020 after following the circular issued by the 2nd respondent and the guidelines framed in the judgment reported in 99VST 343 [in the case of JKM Graphics] after hearing the petitioner.

For Petitioner	:	Mr.D.Vijayakumar
For Respondents	:	Mr.V.Prasanth Kiran Government Advocate

ORDER

The issue that arises for consideration in this writ petition is whether in all cases where rectification of the Assessment Order is sought for under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 is there a need for the Assessing Officer to provide an opportunity of hearing to the Dealer.

2. The petitioner has challenged the order dated 14.11.2022 passed by the 1st respondent rejecting the petitioner's request for rectification of the Assessment Order under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 (in short, 'the Act').

3. Section 84 of the Act, reads as follows:-

> *84. Power to rectify any error apparent on the face of the record.*
>
> *(1) An assessing authority or an appellate or revising authority (including the Appellate Tribunal) may, at any time within *Six 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 there under shall apply as if such notice had been given in the first instance.*
>
> *(4) The powers under sub-section (1) may be exercises 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."*

4. The contention of the learned counsel for the petitioner is that in all cases seeking for rectification, the Dealer must be afforded an opportunity of hearing. However, as seen from the Proviso to Section

84(1) of the Act, only in cases where the Assessing Officer proposes to enhance an assessment or any penalty, he will have to give a notice to the Dealer and a reasonable opportunity of hearing must be afforded before enhancing the assessment or penalty.

5. In the case on hand, the petitioner has admittedly not challenged the Assessment Order passed against him in the year 2016 by preferring the statutory appeal. Instead of challenging the Assessment Order by filing the statutory appeal, the petitioner has chosen to seek for rectification of the Assessment Order after a lapse of more than six years under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, which has been rejected under the impugned order. The petitioner claims to have given a representation on 02.11.2020 to the respondents stating their willingness to furnish further explanation if sought for by the respondents in respect of his application filed under Section 84 of the Act.

6.Rectification application under Section 84 of the Act cannot be treated on par with a regular assessment. Only in cases, where there is an error which is apparent on the face of the record in the Assessment

Order, a rectification under Section 84 of the Act is permissible. If the opportunity of hearing for the Dealer is made mandatory in an application filed under Section 84 of the Act, there will be no finality of any Assessment. That is the reason as to why the Legislature thought it fit to include the 1st proviso in Section 84(1) of the Act by making it clear that only in cases, where there is an enhancement of assessment or penalty, the Assessment Officer will have to give an opportunity of hearing to the Dealer and not otherwise. The respondents in the impugned order has examined the request of the petitioner seeking for rectification and only thereafter correctly found that the assessment dated 19.12.2016 for the Assessment Year 2013-14 does not require any rectification. As observed earlier, as per the provisions of Section 84 of the Act, only in cases of enhancement of Assessment or Penalty, the respondents will have to afford an opportunity of hearing to the petitioner. Since the respondents have confirmed the Assessment made in the year 2016 for the Assessment Year 2013-14 in the impugned order, the question of granting an opportunity of hearing to the petitioner will not arise. The 1st respondent has rightly rejected the petitioner's request for rectification under Section 84 of the TNVAT Act, 2006.

7. The learned counsel for the petitioner had relied upon the following authorities in support of his contention that an opportunity of hearing ought to have been granted to the petitioner by the 1st respondent before rejecting the petitioner's application filed under Section 84 of the Act seeking for rectification.

a) Order of the Hon'ble Supreme Court in the case of Automotive Manufacturers Association v The Designated Authorities reported in 2011 2 SCC 258.

b) Order of this Court, dated 15.11.2021 passed in a batch of writ petitions in the case of Tvl.Anugraha Traders vs. The State Tax Officer (Additional) in W.P. Nos.9948 and 9949 of 2019.

c) Order of this Court, dated 17.12.2015 passed in a batch of writ petitions in the case of M/s.Malladi Drugs & Pharmaceuticals Ltd., vs. The Assistant Commissioner - CT and three others in W.P. No.38722 of 2015 and batch.

8. In the aforesaid decisions, the 1st proviso to Section 84(1) of the Act, which makes it clear that only in cases, where the rectification which has an effect of enhancing the assessment or penalty, there is a statutory requirement for granting reasonable opportunity of hearing to

the Dealer and not when the assessment has been confirmed. The application of the Principle of *Audi Alteram Partem* is a general principle, which will not apply to the cases, where there is no enhancement of assessment or penalty in an order passed under Section 84 of the Act is passed.

9. In the case on hand, the assessment or penalty has not been enhanced by the 1st respondent but the 1st respondent has only confirmed the earlier Assessment Order passed against the petitioner in the year 2016. Therefore, there is no necessity for the 1st respondent to afford an opportunity of hearing to the petitioner.

10. This Court does not find any infirmity in the impugned order. Accordingly, this writ petition is dismissed. No costs. Connected miscellaneous petition is closed. However, liberty is granted to the petitioner to file a revision under Section 54 of the TNVAT Act, 2006 as against the impugned order, within a period of one week from the date of receipt of a copy of this order. On receipt of the said revision within the stipulated time, the revisional authority is directed to pass orders on merits and in accordance with law on the revision petition as well as the

stay petition, as expeditiously as possible considering the fact that the petitioner's property has already been brought for public auction.

23.01.2023

Note : Issue order copy on 25.01.2023
Index:Yes/No
Neutral Citation:Yes/No
ssm/vsi2

To

1.The Deputy Sales Tax Officer,
Thirukoilur Assessment Circle,
Thirukoilur.

2.The Commissioner of Commercial Taxes
Ezhilagham,
Chepauk, Chennai – 5.

ABDUL QUDDHOSE, J.

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W.P.No.1287 of 2023

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