IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.24966 of 2021 and
W.M.P. No.26281 of 2021

Tvl.ARP Exports,
No.1/64, Middle Street,
Melmampattu, Panruti 607 103.
Represented by its Proprietor
R.Arumugam ..Petitioner

Vs.

The Deputy Commercial Tax Officer,
Panruti (Rural) Circle,
Commercial Taxes Building,
Panruti 607 106. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the Respondent in passing the impugned order bearing Reference No:Rc.A3/526/2018 dated 17.08.2021 and quash the same and direct the Respondent to consider the application dated 28.04.2021 of the petitioner filed under Section 84 of the TNVAT Act on merits.

For Petitioner : Mr.Adithya Reddy

For Respondent : Ms.Amrita Dinakaran
Government Advocate

ORDER

The writ petition is filed challenging the rejection of the rectification petition vide proceeding dated 17.08.2021, which is an order though titled as notice.

2. It is submitted by the learned counsel for the petitioner that the impugned order of assessment dated 14.02.2018 was made on the basis that verification of departmental website revealed that the petitioner has made purchases and suppressed the same. It was proposed to make a best judgment assessment by estimating on the basis of the BIU report. Though several opportunities were granted to the petitioner to respond including personal hearing, he had not availed the same nor was any objections filed. The impugned order dated 14.02.2018 was passed confirming the proposal.

3. Thereafter, on 28.04.2021, the petitioner filed a rectification petition wherein reliance was placed on the judgment of this Court in the case of JKM Graphics Solutions Private Limited vs. The Commercial Tax Officer reported in (2017) 99 VST 343 (Mad) to submit that the impugned order of assessment is contrary to the directions issued therein and thus suffers from error apparent.

During the course of the hearing, it was submitted that pursuant to the orders of this Court in the case of *JKM Graphics*, the Commissioner of Commercial Taxes has also issued a circular viz., Circular No.5 wherein a mechanism is put in place to deal with mis-match issues.

4. It is submitted by the learned counsel for the petitioner that though the rectification petition was filed by placing reliance on the decision of this Court in the case of *JKM Graphics*, the impugned order rejecting the rectification petition is made by looking at the conduct of the petitioner in the assessment proceeding viz., not availing the opportunity and not filing an appeal against the order of assessment without dealing with the submissions / contentions raised in the rectification petition and thus suffers from non-application of mind.

5. To the contrary, it was submitted by the learned counsel for the respondent that the petitioner having failed to avail the opportunities that were extended during the assessment proceedings it would not lie in the mouth of the assessee to submit that the order suffers from error apparent.

6. Having heard both sides and having perused the impugned notice

dated 17.08.2021, I find that there is force in the submission of the learned counsel for the petitioner insofar as it is submitted that the contention raised in the rectification petition has not been dealt with at all. Once a rectification petition is filed, a duty is cast on the assessing authority to examine the contentions and the power under Section 84 of the Tamil Nadu Value Added Tax Act, 2005, to rectify ought to be exercised if circumstances are shown to exist which warrants the exercise of such power. Failure on the part of the assessing officer to even consider the contention raised in the rectification petition vitiates the impugned proceeding. The matter is remitted back to the assessing authority to re-examine the application in terms of Section 84 of the TNVAT Act. The writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

15.12.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
Spp

To:
The Deputy Commercial Tax Officer,
Panruti (Rural) Circle,
Commercial Taxes Building,
Panruti 607 106.

MOHAMMED SHAFFIQ, J.

Spp

W.P. No.24966 of 2021 and
W.M.P. No.26281 of 2021

15.12.2023