IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. Nos.2970 and 2971 of 2021
and
C.M.P. Nos.20163 and 20164 of 2021

M/s.Lal Construction Company,
Rep. By its Director,
No.8, 3rd floor, Lokesh Enclave,
No.19, Club Road,
Chennai 600 031. ... Appellant in both appeals

v.

The Assistant Commissioner (CT),
Esplanade I Assessment Circle,
Chennai 600 001. ... Respondent in both appeals

Prayer in W.A.No.2970 of 2021: Writ Appeal is filed under Clause 15 of the Letter Patent, praying to set aside the order in W.P.No.5427 of 2014 dated 06.08.2021 and the interest levied by the respondent as per the impugned proceedings in TIN 33830100418/2006-07 dated 15.11.2013 may be deleted in view of the various judicial pronouncement of the Apex Court.

Prayer in W.A.No.2971 of 2021: Writ Appeal is filed under Clause 15 of the Letter Patent, praying to set aside the order in W.P.No.5428 of 2014 dated 06.08.2021 and the interest levied by the respondent as per the impugned proceedings in TIN 33830100418/2007-08 dated 15.11.2013 may be deleted in view of the various judicial pronouncement of the Apex Court.

For Appellant in both W.As. : Mr.C.Baktha Siromoni

For Respondent in both W.As. : Mr.M.Venkateswaran,
Special Government Pleader

COMMON JUDGMENT

(Judgment of the Court was made by *MOHAMMED SHAFFIQ,J.*)

Heard both sides and perused the materials available on record.

2.These two writ appeals are filed by the appellant / assessee challenging the order of the learned Judge rejecting the challenge to the impugned orders of assessment for the assessment years 2006-07 and 2007-08 on the premise that the appellant is bound to prefer an appeal and the filing of the rectification petition is only to circumvent the filing of a statutory appeal, which mandates pre-deposit.

3.The appellant was a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act") engaged in execution of works contract. They had filed returns for the relevant assessment years viz., 2006-07 and 2007-08 and were deemed to have been assessed under Section 22(2) of the TNVAT Act. While so, the appellant's place of business was inspected by the Enforcement Wing Officers on 23.06.2010 and certain defects were noticed which *inter alia* included the ineligibility of the appellant to pay tax at compounded rate on works contract and its liability to pay purchase tax under Section 12 of the TNVAT Act in view of the alleged purchases effected from the unregistered dealers within the State. After following due procedure, the orders of assessment dated 15.11.2013 for the relevant assessment years, came to be passed stating that the appellant had filed returns in Form L and paid tax at compounded rate at 2% on the premise that they have effected interstate purchases and thus, they were ineligible to opt for payment of tax at compounded rate under Section 6 of the TNVAT Act.

4.Subsequently, the appellant filed a rectification petition dated 30.01.2014 praying for rectification of the impugned orders of assessment dated 15.11.2013 *inter alia* on the following grounds:

a. That the interstate purchases have been subject to double taxation.

b. That the original assessment having been completed without disturbing the compounded rate tax under Section 6 of the TNVAT Act, the revision, if any of such assessment/deemed assessment, must also be made only under Section 6 of the TNVAT Act and it is impermissible to assess the works contract under Section 5 of the TNVAT Act.

c. That the TDS deduction was included in the turnover / contract value and the further deduction of labour charges in terms of Rule 8(5) of the TNVAT Rules was not granted to the appellant.

d. That the estimation was made by adding gross profit of 7% to the purchase value, while the company has incurred losses during the relevant assessment years and thus, the question of addition of gross profit is unsustainable.

e. That the restriction under Section 6 of the TNVAT Act in respect of the interstate purchases falls foul of Part XIII of the Constitution of India.

f. That the impugned orders of assessment suffer from the above errors which are apparent on the face of the record and thus, sought for rectification, after providing an opportunity of personal hearing to the appellant.

5.After filing of the above rectification petition on 30.01.2014, writ petitions came to be filed on 19.12.2014 challenging the orders of assessment while praying for a direction to the respondent to rectify the mistakes and pass orders, on considering the representation filed on 30.01.2014 after granting the appellant an opportunity of personal hearing.

6.By the impugned order dated 06.08.2021, the learned Judge had dismissed the writ petitions on the premise that the appellant had filed the same without allowing sufficient time to the respondent to look into the representation seeking rectification of the alleged errors apparent on the face of the record in terms of Section 84 of the TNVAT Act observing that such conduct ought not to be encouraged. The learned Judge thereafter proceeded to examine the contents of the rectification petition and found that the reasons for rectification do not fall within the scope of errors apparent on the face of the record, but instead are grounds / reasons which require detailed arguments / deliberation. It is against the order of the learned Judge, the appellant filed the present appeals.

7.We find that the order of the learned Judge dismissing the writ petitions warrants interference for the following reasons:

a. The remedy of rectification is a discretionary power coupled with a duty to be exercised when circumstances exist for exercise of such power. It is for the assessing authority to exercise the power of rectification and not for the Courts to substitute their views as that of the assessing officer on the rectification petition; and

b. A statutory remedy is available under Section 84 of the TNVAT Act to an assessee if the order is shown to suffer from error apparent on the face of record. The order of the learned Judge in effect results in taking away from the appellant, the statutory remedy by way of rectification petition.

8.It is trite law that the Court in exercise of its power of judicial review under Article 226 of the Constitution of India, would not direct a statutory authority to exercise its discretion in a particular manner, but would only command the statutory authority to perform its duty by exercising the discretion according to law*. In the instant case, the learned Judge has proceeded to examine and reject the rectification petition, which is a discretion vested with the assessing authority and has thus substituted his views as that of the assessing officer, which is impermissible in law. In this regard, it may be useful to refer to the following judgments:

> *i. State of U.P. And another v. Raja Ram Jaiswal and another, (1985) 3 SCC 131:*
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> *"16. The High Court was, of course, clearly in error in issuing a mandamus directing the District Magistrate to grant a licence. Where a statute confers power and casts a duty to perform any function before the power is exercise or the function is performed, the Court cannot in exercise of writ jurisdiction supplant the licensing authority and take upon itself the functions of the licensing authority."*
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> *(emphasis supplied)*
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> *ii. U.P.State Road Transport Corporation and another v. Mohd. Ismail and others:*
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> *"12. The High Court was equally in error in directing the Corporation to offer alternative job to drivers who are found to be medically unfit before dispensing with their services. The Court cannot dictate the decision of the statutory authority that ought to be made in the exercise of discretion of the statutory authority that ought to be made in the exercise of discretion in a given case. The Court cannot direct the*

* *Lekhraj Sathramdas Lalvani v.N.M.Shah, Deputy Custodian-cum-Managing Officer, AIR 1966 SC 334 State of Uttar Pradesh v, Raja Ram Jaiswal, (1985) 3 SCC 131; Chingleput Bottlers v.Majestic Bottling Company, (1984) 3 SCC 258.*
U.P.State Road Transport Corpn. v. Mohd. Ismail, AIR 1991 SC 1099

statutory authority to exercise the discretion in a particular manner not expressly required by law. The Court could only command the statutory authority by a writ of mandamus to perform its duty by exercising the discretion according to law. Whether alternative job is to be offered or not is a matter left to the discretion of the competent authority of the Corporation and the Corporation has to exercise the discretion in individual cases. The Court cannot command the Corporation to exercise discretion in a particular manner and in favour of a particular person. That would be beyond the jurisdiction of the Court."

(emphasis supplied)

9.In such view of the matter, the order of the learned Judge passed in the writ petitions is liable to be set aside and is thus, set aside. As a sequel, the respondent is directed to pass orders on the rectification petition filed by the appellant on 30.01.2014, on merits and in accordance with law, after affording an opportunity of personal hearing to the appellant, without being influenced by any of the observations made by the learned Judge. Such an exercise shall be completed by the respondent within a period of six (6) weeks from the date of receipt of a copy of this judgment.

10.Both these appeals stand disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]
30.08.2023

Index: Yes/No
Speaking order / Non speaking order
Neutral Citation: Yes/No
shk

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

shk/rk

To
The Assistant Commissioner (CT),
Esplanade I Assessment Circle,
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