IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.27114, 27119, 27121 and 27126 of 2023
and
W.M.P.Nos.26560, 26561, 26563, 26564, 26566, 26568, 26573 and 26574 of 2023

Tvl.N.S.Agencies,
Represented by its Proprietrix
V.Nirmala,
No.1/23-A, Santhur Main Road,
Pochampalli, Krishnagiri - 635 206. ... Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (ST),
Krishnagiri II Assessment Circle,
Krishnagiri. ... Respondent in all W.Ps.

Prayer in W.P.No.27114 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the respondent in its impugned proceedings made in TIN : 33883304834/2013-2014 dated 27.07.2021 and the consequential impugned proceedings of the respondent made in TIN : 33883304834/2013-2014 dated 12.04.2023 quash the same.

Prayer in W.P.No.27119 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the respondent in its impugned proceedings made in TIN : 33883304834/2014-2015 dated 11.11.2019 and the consequential impugned proceedings of the respondent made in TIN : 33883304834/2014-2015 dated 17.04.2023 quash the same.

Prayer in W.P.No.27121 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the respondent in its impugned proceedings made in TIN : 33883304834/2015-2016 dated 11.11.2019 and the consequential impugned proceedings of the respondent made in TIN : 33883304834/2015-2016 dated 17.04.2023 quash the same.

Prayer in W.P.No.27126 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the respondent in its impugned proceedings made in TIN : 33883304834/2016-2017 dated 24.02.2021 and the consequential impugned proceedings of the respondent made in TIN : 33883304834/2016-2017 dated 12.04.2023 quash the same.

For Petitioner (In all W.Ps)	:	Mr.S.Rajasekar
For Respondent (In all W.Ps)	:	Mrs.E.Ranganayaki Special Government Pleader

COMMON ORDER

Mrs.E.Ramganayaki, learned Special Government Pleader takes notice on behalf of the respondent.

2. By this common order, all these writ petitions are being disposed of.

3. In these writ petitions, the petitioner is aggrieved by the impugned Assessment Orders dated 12.04.2023 and 17.04.2023 passed by the respondent rejecting the applications filed by the petitioner for rectification of the following Assessment Orders:-

Sl.No.	***W.P.No.***	***Assessment Year***	***Date of the Assessment Order***
1.	W.P.No.27114 of 2023	2013-2014	12.04.2023
2.	W.P.No.27119 of 2023	2014-2015	17.04.2023
3.	W.P.No.27121 of 2023	2015-2016	17.04.2023
4.	W.P.No.27126 of 2023	2016-2017	12.04.2023

4. All the four impugned Assessment Orders read almost identically. Relevant portion of the impugned Assessment Order in W.P.No.27114 of 2023 reads as under:-

> ***"At the outset it is pointed out that there is no error apparent on the fact of record warranting rectification u/s 84 of the said Act in this case. It is further pointed out that the Apex Court have held in the case of Assistant Commercial Tax Officer Vs. M/s.Makkad Plastic Agencies (2011) NTN (Vol.45) - P.268) that under the power of rectification, only obvious mistake apparent on the face of the record can be corrected. The Allahabad High Court in the case of M/s.Vivek Mentha Udyog Rampur Vs. The Commissioner of Trade Tax U.P. Lucknow 2009 NTN (Vol.40) - P.254) have held that debatable orders cannot be considered as a mistake on the fact of the record for the purpose of Section 22 of the U.P. Trade Tax Act, 1948. The Hon'ble High Court of Madras in the case of Sneva Diamond Tools reported in 72 STC 329 (Mad) have held that in a rectification under this Section 55 of TNGST Act, 1959 (similar to Section 84 of TNVAT Act, 2006) only clerical and arithmetical mistakes in the original order could be corrected. Therefore, it is opined that the said Section 84 permits only correction of mistakes which are obvious, glaring and self-evident, not requiring any detailed investigation into facts or arguments on law. The Hon'ble High Court of Madras in the case relating to Mas Chew Gums (India) Pvt. Ltd., Vs. CTO (2002) reported in 127 STC 424 (Mad) have held that the mistake apparent while calculating tax due could be rectified.***
>
> ***As per the above cited case laws, it can be seen that there is no apparent mistake in the original order dated 24.02.2021 warranting rectification u/s 84 of the said Act. The question relating to purchase omissions and wrong claim of ITC on purchase returns can be considered only***

after detailed scrutiny of accounts relating to purchase, sale, ITC received through tax invoices, ITC availed against output tax, credit notes or debit notes issued by the parties etc. In this case the dealer has not produced those records for scrutiny. Nor filed any objection against the Show Cause Notice dated 02.09.2020 and 14.07.2021. It is further observed that the facts and issues involved in the case laws relied upon by the petitioner are not applicable to the particulars facts involved in this case.

In view of the above circumstances, facts, contention, and court decisions relied on by me, the petition filed by the dealer seeking rectification of original order u/s 84 of the said Act is rejected.

Assistant Commissioner(ST)

Krishnagiri-II."

5. The admitted facts of the cases are that prior to the Assessment Orders, notices were issued to the petitioner. However, the petitioner failed to respond to the notices or appear for a personal hearing and therefore, the above mentioned Assessment Orders came to be passed. Meanwhile, a decision was rendered by this Court in **M/s.JKM Graphics Solutions Private Limited, Chennai** Vs **The Commercial Tax Officer, Vepery Assessment Circle, Chennai and others**, in W.P.No.105 of 2016 dated 06.12.2016, (2017) 99 VST 343 (Mad.).

6. Based on the above decision, the Additional Secretary had issued a

Circular in Circular No.5/2021 dated 24.02.2021.

7. The applications filed by the petitioner under Section 84 of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006, which have been rejected cannot be faulted as no error apparent on the face of record and are discernible in the impugned Assessment Orders mentioned above as the petitioner failed to respond to the notices that preceded the impugned Assessment Orders.

8. Considering the fact that the petitioner may have a case on merits, to balance the interest of the petitioner and the interest of the revenue, Court is inclined to grant liberty to the petitioner to file a statutory appeal before the Appellate Commissioner against the respective Assessment Orders within a period of thirty days from the date of receipt of a copy of this order under Section 51 of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006, subject to the petitioner depositing 25% of the disputed tax along with the appeal, as there are several disputed questions of fact which cannot be decided in this summary proceedings.

9. If the petitioner files such appeal within such time as specified above together with pre-deposit of 25% of the disputed tax, the Appellate Commissioner shall dispose the appeal on merits and in accordance with law, as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order.

10. Subject to such pre-deposit, all recovery proceedings shall be kept in abeyance till the disposal of stay petition.

11. The Appellate Commissioner shall examine the issue depending on the gravity of the case and may put the petitioner to such further terms for staying the recovery of amount pursuant to the impugned Assessment Orders.

12. The Appellate Commissioner will be guided by the principles of *prima facie* case, balance of convenience, irreparable injury that may be caused to the petitioner while disposing the aforesaid application.

13. These Writ Petitions are disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

15.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

The Assistant Commissioner (ST),
Krishnagiri II Assessment Circle,
Krishnagiri.

C.SARAVANAN, J.

arb

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and
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