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W.P.No.13624 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	18.11.2024
Pronounced On	24.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.No.13624 of 2022
and
W.M.P.No.12854 of 2022

M/s.Shree Ganesh Ventures,
Represented by its Partner,
Mr.Raghav Kumar Saraf,
No.14A, Ennore High Road,
Thiruvottiyur, Chennai – 600 019.

... Petitioner

Vs.

The Assistant Commissioner (ST),
Thiruvottiyur Assessment Circle,
Room No.215, 2nd Floor,
Integrated Commercial Taxes Office Complex,
Survey No.1275/3, Elephant Gate Bridge,
Chennai – 600 003.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the impugned order passed by the respondent in TIN/33621101719/2013-2014 dated 11.05.2022 and quash the same and further direct the respondent to consider the application filed by the petitioner under Section 84 of the TNVAT Act, 2006 on its own merits and in accordance with law.



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For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.C.Harsharaj
Additional Government Pleader

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

2. This writ petition has been filed to call for the records in the impugned order passed by the respondent in **TIN/33621101719/2013-2014** dated **11.05.2022** and quash the same and further direct the respondent to consider the application filed by the petitioner under Section 84 of the TNVAT Act, 2006 on its own merits and in accordance with law.

3. The dispute relates to denial of input tax credit in terms of Section 19(5)(c) and 19(2)(V) of the TNVAT Act, 2006. The petitioner had earlier suffered an **Assessment order** dated **24.06.2016** for the **Assessment Year 2013-2014**, wherein, the following amounts were confirmed against the petitioner.

Sl.No.	Reversal of Input Tax Credit amount confirmed under Section 19(5)(c)	Reversal of Input Tax Credit amount confirmed under Section 19(2)(5)
1	3,05,909/-	5,41,115/-



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4. The petitioner however did not choose to file an appeal against the aforesaid order and had slept over its rights. Subsequently, the petitioner was issued with two recovery Notices dated **28.02.2020** and **21.03.2022** seeking to recover the aforesaid amount as per the **Assessment Order** dated **24.06.2016**.

5. During the interregnum, the petitioner was also issued with a Notice dated 06.05.2019 seeking to recover the aforesaid amount, as if it were a fresh Notice to recover an amount of **Rs.3,39,081/-** due under the aforesaid provisions instead of **Rs.3,05,909/-** towards the reversal of input tax credit under Section 19(5)(c) of TNVAT Act, 2006.

6. In this background, the petitioner challenged the recovery Notice dated **21.03.2022** in W.P.No.8071 of 2022. W.P.No.8071 of 2022 however came to be withdrawn at the time of its admission on **05.04.2022**. Subsequently, the petitioner filed **W.P.No.9845 of 2022** to quash the Assessment Order dated 24.06.2016. W.P.No.9845 of 2022 was dismissed by this Court at the time of admission vide its order dated **25.04.2022**. Paragraph Nos.5, 6 and 7 of the aforesaid order dated **25.04.2022** read as under:-

“5.Assuming that, if there are any grounds under which the order impugned can be challenged before this



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Court invoking the extraordinary jurisdiction under Article 226, that could have also been done immediately. Here, neither he has filed an appeal nor file a writ petition, after six years he has now filed this writ petition, therefore, on the ground of laches, this Court, in the considered opinion, the writ petition is liable to be rejected.

6. That apart, since there is an appeal remedy available for the petitioner, the impugned order can very well be challenged before the Appellate Authority by stating whatever the reason for filing a belated appeal before the Appellate Authority.

7. In that view of the matter, this Court is not inclined to entertain this writ petition, hence, it is liable to be dismissed, accordingly, it is dismissed. However, this dismissal will not preclude the petitioner to file an appeal against the impugned order before the Appellate Authority. If such an appeal is filed, depending upon the reasons to be submitted by filing the belated appeal, the same can be entertained after evaluating such reasons in proper perspective by the Appellate Authority.”

7. A reading of the above paragraphs indicates that the Court has not given liberty to the petitioner to challenge the Assessment order dated 24.06.2016 in clear terms. The issue on merits as on date is however covered in favour of the petitioner in terms of the decision of the Division Bench of this Court in **W.A.No.1260 of 2017 batch etc.**, vide its order dated **31.03.2022** in ***State of Tamilnadu, Rep by its Secretary, Commercial Taxes Department, Chennai Vs. M/s.Everest Industries Limited, rep by its Senior Manager-Finance, Podanur Post, Coimbatore – 641 023.***



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8. The petitioner also did not file a Statutory Appeal under Section 51 of the TNVAT Act, 2006 before the First Appellate Authority. Instead, the petitioner filed a petition under Section 84 of the TNVAT Act, 2006 for rectification of order dated **24.06.2016** in the light of the subsequent order of the Hon'ble Division Bench of this Court in W.A.No.1260 of 2017 batch etc., vide its order dated 31.03.2022. The application filed by the petitioner under Section 84 of the Act on 05.05.2022 has been rejected by the respondent.

9. The learned counsel for the petitioner would draw attention to paragraph Nos.149 and 150 from the decision of the Division Bench of this Court vide its order dated 31.03.2022 in the case of ***State of Tamilnadu, Rep by its Secretary, Commercial Taxes Department, Chennai Vs. M/s.Everest Industries Limited, rep by its Senior Manager-Finance, Podanur Post, Coimbatore – 641 023.***

10. On the other hand, the learned Additional Government Pleader for the respondent would submit that the petitioner failed to file an appeal against order dated 24.06.2016. It is submitted that even during the period after the aforesaid order was passed, there were several decisions of this Court which had followed the decision of the Division Bench of this Court in the case of ***State of***



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Tamilnadu, Rep by its Secretary, Commercial Taxes Department, Chennai

Vs. M/s.Everest Industries Limited, rep by its Senior Manager-Finance,

Podanur Post, Coimbatore – 641 023. However, the petitioner slept over its

rights. It is submitted that no attempt was made challenging the Assessment

Order dated 24.06.2016. W.P.No.8071 of 2022 was filed against the recovery

notices issued to recover the aforesaid amount which was also dismissed as

withdrawn at the time of admission on **05.04.2022**. Thereafter, another attempt

was made to quash the Assessment Order dated **24.06.2016** in W.P.No.9845 of

2022 which was also dismissed by this Court vide its Order dated **25.04.2022**.

11. It is submitted that merely because, a subsequent decision is rendered by the Division Bench of this Court upholding the rights of an assessee would not entitle an assessee to revive the litigation by filing a writ petition. It is submitted that clearly the writ petition that was filed subsequently on **25.04.2022** in **W.P.No.9845 of 2022** was liable to be dismissed and was accordingly dismissed. Even if an appeal was filed by the petitioner under Section 51 of the TNVAT Act, 2006, it could have been dismissed on account of limitation under Section 51 of the TNVAT Act, 2006. Further, it is submitted that Section 84 of the Act, is available entitled only for rectification of error apparent on the face of record. It is submitted that subsequent decision



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of the Court would not render the Assessment Order dated 24.06.2016 suffered from the vices of error apparent on the face of record. It is therefore submitted that it would not entitle an assessee to file an application for rectification of mistake under Section 84 of the TNVAT Act, 2006.

12. By way of rejoinder, the learned counsel for the petitioner would submit that even if the petitioner had failed to exercise the option under Section 51 of the TNVAT Act, 2006, it would not precluded the petitioner from invoking the jurisdiction under Section 84 of the TNVAT Act, 2006.

13. In this connection, the learned counsel for the petitioner would draw attention to the decision of this Court in the following three cases:-

(i) Khivraj Motors Limited, Rep by its Director Vs. The Assistant Commissioner (CT), Fast Track Assessment Circle – III, Chennai and another in W.A.Nos.3201 to 3204 of 2004 vide its order dated 04.02.2010;

(ii) M/s. Malladi Drugs & Pharmaceuticals Ltd., Rep by its General Manager Vs. The Assistant Commissioner – CT, Nadambakkam Assessment Circle and others in W.P.Nos.32722 to 38726 of 2015 vide its order dated 17.12.2015 and

(iii) The Gingee Agriculture Producers, Co-operative Marketing Society Ltd Vs. The Commercial Tax Officer (FAC), Gingee, Villupuram District in W.A.No.143 of 2021 vide its order dated 20.01.2021.”



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14. The learned counsel for the petitioner would submit that in all the above decisions, the Court has come to the rescue as long as an application is filed under Section 55 of the TNGST Act, 1959 which is *pari materia* under Section 84 of the TNVAT Act, 2006. The learned counsel for the petitioner further submits that paragraph No.150 of the order of the decision of the Hon'ble Division Bench of this Court in the case of ***State of Tamilnadu, Rep by its Secretary, Commercial Taxes Department, Chennai Vs. M/s.Everest Industries Limited, rep by its Senior Manager-Finance, Podanur Post, Coimbatore – 641 023*** as clearly alienated the position of law and that being the case, it is not open for the respondent to reject the application under Section 84 of the TNVAT Act, 2006.

15. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

16. The issue that arises for consideration is whether the petitioner was entitled to file a petition under Section 84 of the TNVAT Act, 2006 which is *pari materia* to Section 55 of the TNGST Act, 1959. They reads as under:-

Section 55 of the TNGST Act, 1959: Power to rectify any error apparent on the face of the record. – (1) An assessing



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authority or an appellate or revising authority (including the Appellate Tribunal) may, at any time within [five 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 a reasonable opportunity of being heard.

17. As mentioned above, the issue on merits is covered by the decision of the Division Bench of this Court in the case of ***State of Tamilnadu, Rep by its Secretary, Commercial Taxes Department, Chennai Vs. M/s.Everest Industries Limited, rep by its Senior Manager-Finance, Podanur Post, Coimbatore – 641 023.***

18. The application that was filed by the petitioner under Section 84 of the TNVAT Act, 2006 is in time. Even if the writ petition that were filed by the petitioner earlier challenging the Recovery Notice and the Assessment order dated 24.06.2016 were to be dismissed on account of laches, it cannot be construed that the application under Section 84 of the TNVAT Act, 2006 were barred. Even if the Appellate remedy is not available under Section 51 of the TNVAT Act, 2006, the remedy under Section 84 of the Act cannot be denied particularly when the law has been settled in favour of the assessee.



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19. Under these circumstances, this Writ Petition stands allowed. Thus, the impugned order dated 11.05.2022 stands quashed and the case stands remitted back to the respondent to pass a fresh order on merits as prayed for. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

24.01.2025

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

The Assistant Commissioner (ST),
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Room No.215, 2nd Floor,
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C.SARAVANAN, J.

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Pre-delivery Order in
W.P.No.13624 of 2022
and



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