(2015) 11 MAD CK 0065

In the Madras High Court

Case No : W.P. Nos. 36280 to 36283 of 2015 and M.P. Nos. 1, 2 of 2015

Manikandan Tyres APPELLANT

Vs

The Assistant Commissioner (CT), Sankari RESPONDENT

Date of Decision : 16-11-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g)
Tamil Nadu Value Added Tax Act, 2006 — Section 19(20), 22(2), 84, 84(4)

Citation : (2015) 11 MAD CK 0065

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : R. Hemalatha, for the Appellant; V. Haribabu, Additional Government Pleader (T), for the Respondent

Judgement

R. Mahadevan, J.—Heard the learned counsel for the petitioner and Mr. V. Haribabu, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the main writ petition is taken up for disposal.

2. The petitioner has come forward with this writ petition challenging the order of the respondent dated 09.10.2015.

3.1 The petitioner is a dealer in tyres being distributors/retailers for prominent Tyre Companies like "Michelin", "Apollo" etc. and an assessee on the files of the respondent-Assistant Commissioner (CT), Sankari, Salem District. For the assessment years 2010-11, 2011-12, 2012-13, 2013-14 respectively, the petitioner had duly reported a total and taxable turnover by way of monthly returns filed in Form I and the same is deemed to have been accepted and originally assessed in terms of Section 22(2) of the TNVAT Act, 2006 and the output tax due was adjusted from the ITC.

3.2 According to the petitioner, on 16.05.2014, the respondent has passed the assessment order. Pointing out certain errors apparent on the face of the record in the assessment order, the petitioner moved an application under Section 84 of the TNVAT Act on 07.10.2015, which is well within the time prescribed under the Act. Further, according to the petitioner, the further rectification of the error caused would help in considerably reducing the unwarranted tax burden that is otherwise payable by the petitioner.

3.3 According to the petitioner, the petitioner earlier filed a writ petition for declaration declaring that Section 19(20) inserted by Amendment Act 22 of 2010 vide notification dated 19.08.2010 and subsequently, altered by Amendment Act 42 of 2010 to be made effective retrospectively from 01.01.2007 as beyond the legislative competence of the State under Entry 54 of List II to the VII Schedule to the Constitution of India as infringing Articles 14 and 19(1)(g) of the Constitution of India and unenforceable. The petitioner also challenged the assessment proceedings for the years 2009-10 to 2013-14 before this Court in W.P. Nos. 11126 and 11127 to 11131 of 2014 and this Court dismissed the same in view of the common order passed by the Division Bench of this Court in W.P. Nos. 25992 of 2010 etc. dated 17.07.2013. Aggrieved over the same, the petitioner preferred an SLP before the Hon''ble Supreme Court and the same is pending.

3.4 When that being the position, according to the petitioner, when they are hoping that favourable orders would be passed in the petition filed under Section 84 of the Act, the respondent has simply brushed aside all the contentions raised by the petitioner and rejected the petition as not entertainable vide proceedings dated 09.10.2015.

3.5 That apart, according to the petitioner, notwithstanding the fact that the petitioner has filed SLP, the respondent has got power under Section 84(4) of the Act, to entertain the petition filed by the petitioner and there is no bar to dispose of the same in accordance with law, which fact, was lost sight of while passing the above said order. Therefore, according to the petitioner, the rejection order passed by the respondent is highly arbitrary and illegal. Hence, the petitioner is before this Court.

4. The learned counsel for the petitioner would submit that the incentive schemes extended to the customers do not form part of sale consideration and therefore, inclusion of all the incentives under taxable net is highly arbitrary and illegal. Therefore, Section 84 application was filed. However, according to her, the respondent has erred in rejecting the petition filed by the petitioner under Section 84 of the Act on the ground that the petitioner has challenged the assessment proceedings so also Section 19(20) inserted by Amendment Act 22 of 2010 vide notification dated 19.08.2010. She would further add that it is not in dispute that the writ petitions filed were dismissed and SLP is pending before the Hon''ble Supreme Court. However, according to her, when Section 84(4) of the Act empowers the respondent to entertain the petition filed by the petitioner, the respondent cannot reject the petition on flimsy grounds.

5. The learned counsel for the petitioner would further add that if the respondent considered the petition filed under Section 84 of the Act and rectified the error on the face of the records, the entire liability would be wiped out. Hence, the learned counsel for the petitioner has prayed for allowing of the writ petition.

6. The learned Additional Government Pleader (Taxes) would submit that the writ petition challenging the assessment order came to be dismissed by this Court and the SLP filed before the Hon''ble Supreme Court as against the said order is pending and since there was no mistake apparent on the face of the record, the respondent has rightly not entertained the rectification petition. Hence, he prayed for dismissal of the writ petition.

7. I have considered the above submissions made by the learned counsel on either side and perused the materials available on record.

8. Admittedly, as against the assessment order, a writ petition was filed before this Court, which was disposed of in favour of the Revenue. As against the said order, a Special Leave Petition was filed and the same is pending. In the meantime, pointing out certain errors apparent on the face of the record, the petitioner moved an application under Section 84 of the Act. Without passing any order on merits, the same was rejected by the impugned order. Section 84 of the TNVAT Act empowers the authority to rectify any error apparent on the face of the record. Sub-Section (4) of Section 84 provides exercise of powers under Sub-section (1) 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.

9. At this juncture, it is useful to refer to Section 84 of the TNVAT Act, which 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 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 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 thereunder shall apply as if such notice had been given in the first instance.

(4) The powers under sub-section (1) may be exercised 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".

10. A perusal of above section would also makes it clear that an opportunity should be given before rejecting the application filed under Section 84 of the Act. As far as the present case is concerned, the same is not provided. When such being the case, there is no justifiable reason for the assessing authority to reject the application filed under Section 84 of the Act.

11. In view of the above, the impugned order passed by the respondent dated 09.10.2015 is set aside and the matter is remitted back to the respondent for passing appropriate orders on merits and in accordance with law, after affording due opportunity to the petitioner as provided under Section 84 of the Act. Such exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. No costs. Connected miscellaneous petitions are closed.