

(2014) 11 MAD CK 0332

In the Madras High Court

Case No : Writ Petition No. 30304 of 2014 and M.P. Nos. 1 and 2 of 2014

Sujana Towers Limited

APPELLANT

Vs

The Assistant Commissioner (CT)

RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Tamil Nadu Value Added Tax Act, 2006 — Section 22(2), 27, 28, 84, 84(1)

Citation : (2014) 11 MAD CK 0332

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—The petitioner, who is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, has filed this

Writ Petition challenging the notice dated 31.07.2014 issued by the respondent by which the petitioner's application filed under Section 84 of the

Act was rejected.

2. The petitioner is a Public Limited Company incorporated under the provisions of the Indian Companies Act having its registered office at

Hyderabad. The petitioner is engaged in the trading activities of iron and steel apart from Tower & Tower parts. The petitioner in the course of

business purchases iron and steel from locally registered dealers and effect sales of the same to the other locally registered dealers. That apart, the

Head Office at Hyderabad have their own set of activities in and around Hyderabad.

3. The petitioner filed monthly returns which were accepted in terms of Section 22(2) of the Act. The officials of the Enforcement Wing of the

respondent Department inspected the place of business of the petitioner on 22.08.2013 and 23.08.2013 and are said to have been pointed out

certain defects. Based on the report submitted by the Enforcement Wing, the respondent issued a notice dated 18.04.2014 proposing to revise the earlier assessment. In the said notice, it was pointed out that verification of the Annual Audit Reports produced for the years 2012-2013, it is seen that the petitioner has effected sale of assets during the year 2010-2011 and they have not produced any proof for having reported the said sales and paid tax to the Department. Therefore, it was proposed to levy tax at 4% on the sale value. Apart from that, there was a proposal to impose penalty under Sections 27 and 28 of the Act at 150%. The petitioner was granted 15 days time to submit their objections and was informed that they would be allowed a personal hearing to represent before the respondent within the time permitted.

4. The petitioner submitted their objections on 14.05.2014 inter alia contending that the balance sheet produced before the Inspecting officers wherein it can be noticed that no sale of assets done by the Chennai Branch and the balance sheet was a consolidated balance sheet for all the subsidiary companies of the group and the Enforcement Officers had perused the schedule of fixed assets in the consolidated balance sheet and had made the proposal. It was further stated that this was informed to the inspecting officers inspite of which the inspecting officers appear to have sent a proposal to assess the same.

5. Further, it was emphasised that the Chennai Branch is not having any plant and machinery for carrying out manufacturing activities. It is a trading Division having Sales Tax and Central Excise Registration. Further, it was stated that the car sale took place in the Head Office in Hyderabad in Andhra Pradesh. The petitioner enclosed the copy of the balance sheet and the certificate obtained from the Auditor in which the Auditor has clearly certified that the Sale of Assets and Vehicle were not related to Chennai Branch. The petitioner also appeared for personal hearing and said to have explained the same based on the balance sheet and the audit certificate. The petitioner would state that they were with the fond hope that the respondent would consider their submissions and if there was any further query, they would be called upon to explain. However, they were served with the assessment order dated 30.06.2014 overruling the objections given by the petitioners and demanding tax and penalty.

6. In the assessment order, the respondent has observed that though the dealers have filed the certificate from the Auditors, they are not filed the relevant purchase bills and debit note or sale bill for the sales effected, hence, the contentions of the dealers are not acceptable. Thereafter, a separate notice, under Rule 16(5) of the Tamil Nadu Rules, was issued calling upon the petitioner to pay the penalty. On receiving the same, the petitioner immediately filed a petition under Section 84 of the Act to revise the proceedings dated 30.06.2014. In the said petition, apart from other things, the petitioner reiterated that they are only a Trading Division and they do not have any plant and machinery and Motor Vehicles in the Chennai Division. Further, the balance sheet is a Consolidated Financial Statement for all the Group concerns and does not pertain to the Chennai Division alone. Further, it was reiterated that the sale of assets was effected by the Head Office at Hyderabad and duly reflected by them before the Jurisdictional Assessing Officer in Hyderabad. The petitioner also reiterated their reply to the Pre-Revision Notice dated 10.04.2014. Further, it was pointed out that the observation in the assessment order is on a totally new premise. It was not the basis of the Pre-Revision Notice and that in spite of production of the balance sheet and the Auditor certificate, the Assessing Officer ought not to have rejected the petitioner's contention by raising a new plea that this purchase/sale bill or debit note was not furnished. However, the petitioner stated that they have procured the bills and other documents like return copies etc. from their Head Office at Hyderabad to establish the fact that the transactions do not pertain to their Chennai Division and it is not assessable within the State of Tamil Nadu. Therefore, it was submitted that there is a gross jurisdictional error and requested for rectification. Further, the petitioner agreed to produce all the books of accounts and connected records to substantiate the claim along with the connected documents from their Head Office at Hyderabad.

7. The respondent, by the impugned notice dated 31.07.2014, stated that Section 84 of the Act can be invoked only for the error apparent on the face of the record viz., Clerical errors and Arithmetical mistakes etc. But it cannot be invoked for considering the records filed after the assessment notice. The said notice is challenged in this writ petition.

8. Heard the learned counsel for the petitioner and the learned Additional

Government Pleader for the respondent.

9. Section 84 of the Tamil Nadu Value Added Tax Act deals with power to rectify any error apparent on the face of the record. Sub-Section (1)

states that the Assessing Authority or an Appellate Authority or Revisional Authority including the 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. Therefore, the power conferred under Section 84(1) on the

Assessing Authority is a power to rectify any error apparent on the face of the record. It does not state that it is only pertaining to Arithmetical

errors or clerical errors. Though the provision states it is a power for rectification in effective, the language employed in the provision would confer

a power on the Authority to review its decision, if there is error apparent on the face of the record.

10. In the Pre-Revision Notice dated 10.04.2014 the allegation against the petitioner is that the sale of plant and machinery and vehicle was not

reported and no documentary proof was shown that it was reported and tax paid to the Department. The contention of the petitioner was that the

Chennai Division does not have any manufacturing facility and it is only a Trading Division. The sale took place in Hyderabad which is their Head

Office and the sale has been reported before the Jurisdictional Assessing Officer at Hyderabad and tax paid. To substantiate their claim, the

Auditor's certificate and the copy of the balance sheet was produced. The respondent did not entertain any doubt with regard to the balance sheet

or the Auditor certificate. However, while passing the assessment order dated 30.06.2014, while accepting those documents were produced,

rejected the petitioner's claim by contending that relevant purchase under debit note/sale bill for the sales effected have not been produced. In fact,

the Pre-Revision Notice did not call for those documents nor there is any record to show that during the personal hearing, the respondent called

for such particulars. Furthermore, the Auditors certificate was not rejected by the Assessing Officer nor the balance sheet was doubted.

11. In such circumstances, the assessment order has proceeded on a totally different basis, than what was alleged in the Pre-Revision Notice

rather the authority rejected the petitioner's contention alleging that certain documents were not produced by the petitioners which in fact was

never called upon by the respondent to be produced. This is an error apparent on the face of the assessment order dated 30.06.2014.

Nevertheless, the petitioner produced the Sales tax return from Hyderabad, Copy of the bill for the sale of assets in Hyderabad, Purchase and sale

bill of the vehicle, Confirmation from the Andhra Pradesh Transport Department, Balance sheet showing list of assets deletion for Sujana Towers

Limited (Petitioner). It is to be noted that the documents which have filed along with rectification petition were not new records, but records in

support of their stand that the sales were pertaining to the Head Office at Hyderabad. Therefore, the observation in the impugned notice, that

Section 84 cannot be invoked for considering the records filed after the assessment is over, is an incorrect observation, since the records were

never called for and those records were anterior to the Pre-Assessment Notice and the transaction is said to have been disclosed in the balance

sheet which was produced by the petitioner along with the reply dated 14.05.2014. Hence, this Court is satisfied that the respondent should

exercise its jurisdiction under Section 84 of the Act.

12. In the light of the above observation, the Writ Petition is allowed and the impugned order is quashed and the matter is remanded to the

respondent for fresh consideration to take into consideration the documents produced by the petitioner along with the petition filed under Section

84 of the Act, after affording an opportunity of personal hearing to the petitioner and pass a reasoned order on merits and in accordance with law.

No costs. Consequently, connected Miscellaneous Petitions are closed.