

W.P.No.1847 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 10.02.2022



CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.1847 of 2022

Tvl. Shandong Teijun Electric Power Engineering Company Ltd.
Kothattai and Ariyakoshti Villages
Chidambaram Taluk
Cuddalore District – 608502
Represented by its Authorized Signatory
Gobalakrishnan

...Petitioner

Vs.

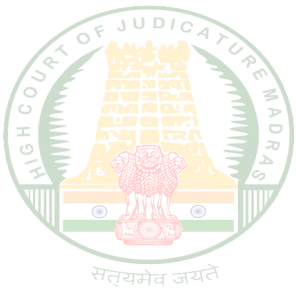
The State Tax Officer
Chidambaram -I Circle
Chidambaram - 608001

...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records leading to the issuance of GSTIN:33AALCS4118F1ZJ dated 14.12.2021 passed by the respondent herein and quash the same, and further direct the Respondent to withdraw the tax demand made vide assessment order dated 11.11.2020 or refund the eligible credit of tax to the petitioner herein.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.N.R.R.Arun Natarajan
Special Government Pleader



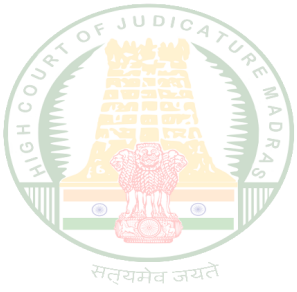
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ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records leading to the issuance of GSTIN:33AALCS4118F1ZJ dated 14.12.2021 passed by the respondent herein and quash the same, and further direct the Respondent to withdraw the tax demand made vide assessment order dated 11.11.2020 or refund the eligible credit of tax to the petitioner.

2. The petitioner is a civil works contractor. He had secured registration under the erstwhile Tamil Nadu Value Added Tax Act, 2006 [in short 'TNVAT Act'] and subsequently, migrated into the Goods and Service Tax Regime under the Tamil Nadu Goods and Services Tax Act, 2017 [in short 'TNGST Act']. The petitioner is an assessee in the files of the respondent.

3. The petitioner had transitioned the available credit of taxes and input tax credits under the erstwhile TNVAT Act and CENVAT Credit into the GST regime by filing FORM GST TRAN-1 in accordance with the provisions of Section 140 of the CGST/TNGST Act.



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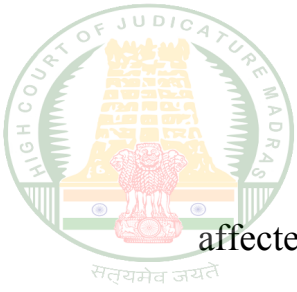
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4. However, the respondent allegedly issued show cause notices dated 21.12.2018, 05.09.2019 and 14.10.2019 to the project site of the petitioner in Cuddalore. Since the entire project was closed at Cuddalore site, the petitioner was not aware of those notices i.e., show cause notices, claimed to have been issued in this regard.

5. Subsequently, the respondent passed an assessment order dated 11.11.2020, directing the petitioner to pay alleged wrongly transitioned 'Input Tax Credit' [ITC] into GST Regime amounting to Rs.7,96,36,717/-along with interest and penalty.

6. As against the said assessment order, the petitioner had filed rectification application under Section 161 of the GST Act. The said application now has been rejected by the respondent through the order dated 14.12.2021, which is impugned herein.

7. In the said order impugned, mainly the point taken by the respondent to reject the application of the petitioner for rectification is that the order originally passed on 11.11.2020, therefore, under Section 161 (1) of the Act, if at all any rectification application has been filed by the



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affected party i.e., the petitioner, he should file rectification application

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within three months period, which ends on 10.02.2021. However, the

petitioner admittedly filed the rectification application only on 03.11.2021.

In this regard, even though the limitation period has been extended by the

suo motu order passed by the Hon'ble Supreme Court of India dated

15.03.2020, which has been extended from time to time, the same would

not be made applicable to the petitioner because the extended period was

over by 02.10.2021. Therefore, beyond 02.10.2021, the petitioner has no

further extended period of limitation even according to the order passed by

the Hon'ble Supreme Court of India and hence, such being the position,

the rectification application admittedly filed on 03.11.2021 cannot be

construed as a filing within the limitation period including the extended

period of limitation by the order of Hon'ble Supreme Court of India and

therefore, mainly on that ground, application submitted by the petitioner

for rectification under Section 161 of the Act was rejected through the

impugned order.

8. Also further reasons stated by the respondent in the order

impugned is that, before the order of assessment was made, notices were

issued atleast two times. However, none of the notices have been



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responded by the petitioner as he has not chosen to appear and give any

reply to the show cause notices as well as notices for personal hearing.

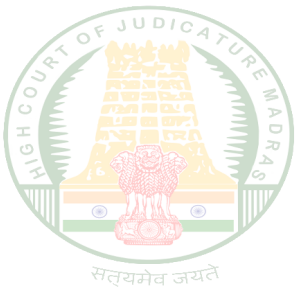
Therefore, the question of any rectification at this juncture does not arise and therefore on that reason also rectification petition of the petitioner was rejected through the impugned order.

9. Challenging this order, the present writ petition has been filed, assailing the reason stated in the said order. Mr.Adithya Reddy, learned counsel appearing for the petitioner would first meet the point with regard to limitation.

10. In this context, he relied upon the three orders passed by the Hon'ble Supreme court of India on the *Suo Motu* PIL dated 08.03.2021, 23.09.2021 and 10.01.2022.

11. In the order dated 23.09.2021, the earlier order of the Hon'ble Supreme Court of India dated 08.03.2021 has been quoted, which reads thus:

*“2. Considering the reduction in prevalence of COVID-19 virus and normalcy being restored, the following order was passed in the *Suo Motu* proceedings on 08.03.2021:*



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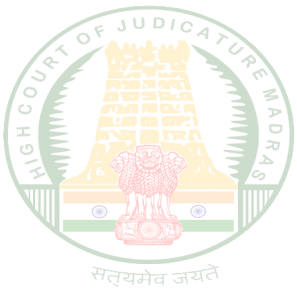
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“1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.”

12. Therefore, according to the said order, the period of limitation was extended up to 15.03.2021 and thereafter, it was not extended because of the restoration of normalcy after Covid-19 first wave.

13. In the said order itself, even though 15.03.2021 was the cut off date, till such time, the extension was given, in respect of cases, where between 15.03.2020 till 14.03.2021, if the original limitation period expires and there is no remainder of the limitation period beyond 15.03.2021, 90 days further period has been given by the Hon'ble Supreme Court in Paragraph 2 of the said order cited supra.



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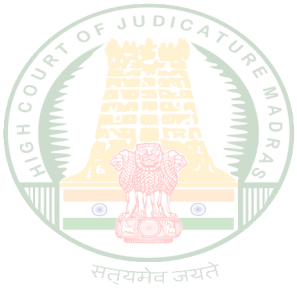
14. Even 90 days period is given to the petitioner, that would not save the limitation for the petitioner as the 90 days would expire on 15.06.2021.

15. However, by further order dated 23.09.2022, the Hon'ble Supreme Court of India having taken into account the subsequent development in respect of the continuous Pandemic situation, due to the Covid-19 second wave, has passed the following orders:

"I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply."

16. Therefore, the total extended period of limitation starts from 15.03.2020 and ends on 02.10.2021.



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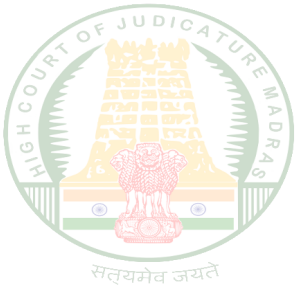
17. Within this period, if the limitation expires in respect of

those cases, further period of 90 days has been provided from 03.10.2021.

18. Herein the case in hand, the limitation insofar as the petitioner case expires on 10.02.2021. Therefore, certainly between 15.03.2020 and 02.10.2021, the period of limitation was over. Therefore, the petitioner case falls under the second category, where the 90 days extension was given from 03.10.2021. If the 90 days was given from 03.10.2021, within which if the application now in question is filed, certainly that would be saved by the limitation extended by the Hon'ble Supreme Court of India.

19. Herein the case in hand, the application for rectification under Section 161 was filed by the petitioner on 03.11.2021. Therefore, it comes within the 90 days extended period from 03.10.2021.

20. Therefore, the said reasons cited by the respondent mainly for rejecting the rectification application cannot stand in the legal scrutiny, he contended.



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21. Insofar as the other reason stated that earlier notices have been given which had not been responded is concerned, the learned counsel for the petitioner would submit that those notices had not been received by the petitioners as it seems to have been sent to the site address, which was already closed prior to the issuance of the notices. Moreover those notices prior to the assessment order cannot stand independent of the rectification application and therefore, that reason would not stand, he contended.

22. Per contra, Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing for the respondent, on instructions, would submit that, insofar as the limitation if it is saved because of the second category of cases dealt with by the Hon'ble Supreme Court of India in the order referred to above, where the limitation has been extended beyond 03.10.2021 for a period of 90 days within which if the rectification application is filed on 03.11.2021 is concerned, that point may go in favour of the petitioner. However, the learned Special Government Pleader contend that when the impugned order was passed, rejecting the rectification application of the petitioner not only on the ground of limitation, but also on merits, where it has been dealt with by the



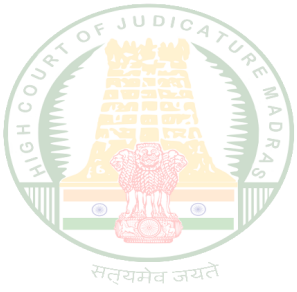
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respondent that there were atleast three notices including notice for

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personal hearing was issued and all those notices having been sent to the petitioner, he has not chosen to reply or appear before the respondent, therefore, at this juncture, there is no scope for making any rectification of the alleged mistake or error as claimed by the petitioner. Therefore on that reason also, since the order impugned has been passed, it cannot be merely treated that the impugned order has been passed only on the ground of limitation. Therefore, the learned Government Pleader would contend that atleast for the second reason, which has been dealt with on merits, the rejection made by the respondents through the impugned order cannot be assailed before this Court by invoking Article 226 of the Constitution of India. Therefore on that ground also, the impugned order is to be sustained and the writ petition is to be dismissed, he contended.

23. I have considered the rival submissions made by the learned counsel appearing for the parties and I have perused the materials placed before this Court.

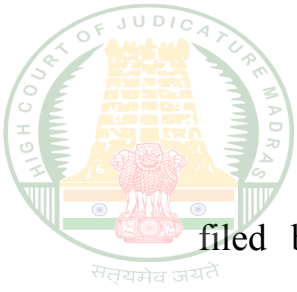


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24. Insofar as the limitation point is concerned, it has been made

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explicitly clear in the said orders referred to above. It is brought to the notice of this Court by the learned counsel for the petitioner in respect of the limitation, there could be no much quarrel from respondent side also as these all are the materials on records. Therefore, the limitation insofar as the petitioner is concerned, is saved by the orders of the Hon'ble Supreme Court of India, hence, on that ground mainly if the rectification application is rejected through the impugned order, the same shall not stand in the legal scrutiny. Insofar as the other reasons given of course on merits according to the respondent is concerned, the language used in Section 161 of the Act is that “without prejudice to the provisions of Section 160 of the Act and notwithstanding anything contained in any other provisions of this Act”. The words “notwithstanding anything contained in any other provisions of this Act” covers the entire provisions of the Act with the said non-abstente clause thereby all other issues or all other mandates under various provisions of the Act stand excluded when rectification proceedings initiated either *suo motu* or at the instance of any officer of the respondent/revenue or at the instance of an application filed in this regard by the affected party within three months period. In view of the saving of the limitation, since the application for rectification has been



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filed by the petitioner, the same shall be independently considered

notwithstanding anything contained in any other provisions of the Act.

Therefore, the earlier show cause notices or notices for personal hearing issued to the petitioner, for which, the petitioner has not responded etc., cannot be cited as a reason for rejecting the rectification application as has been done in the impugned order.

25. Therefore, the said reason also in the considered opinion of this Court in view of the language used in Section 161 will not stand.

26. Therefore, all these reasons cited in the impugned order since cannot stand in the legal scrutiny, this Court has no hesitation to hold that the impugned order is liable to be set aside.

27. In the result, the impugned order is set aside. The matter is remitted back to the respondent for reconsideration. While reconsidering the same, the respondent shall borne in mind the independent nature of the decision making process with regard to the alleged rectification of error anything apparently on the face of the record to be rectified on its own merits, wherein after giving an opportunity of being heard to the



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petitioner, the rectification application shall be accordingly decided and

disposed of within a period of six weeks.

28. With these directions, the writ petition is disposed of accordingly. However, there shall be no order as to costs.

10.02.2022

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Internet : Yes / No

Index : Yes / No

Speaking order / Non Speaking order

To

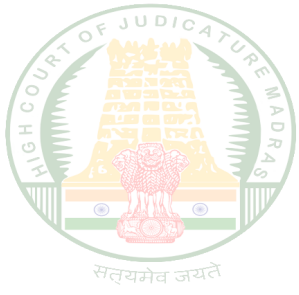
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R.SURESH KUMAR, J.

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