

W.P.(MD) No.7338 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) No.7338 of 2024
and W.M.P.(MD).No.6758 of 2024

M/s.Suriya Cement Agency,
Represented by its Proprietor Salai Sivakumar Vidya
GSTIN 33AHXPV5771B1ZU
No.3, DD Main Road, Arapalayam,
Madurai – 625 016.

... Petitioner

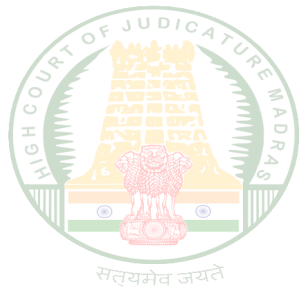
/vs./

1.The State Tax Officer (ST),
Office of the Assistant Commissioner (ST),
West Veli Street Assessment Circle,
Commercial Taxes Buildings,
Madurai – 625 020.

2.The State of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes Department,
Fort St.George, Chennai – 600 009.

3.Union of India,
Ministry of Finance Raj Path Marg 'E' Block,
Central Secretariat, New Delhi – 110 011.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari or any other appropriate Writ, Order of Directions under Article 226 of the Constitution of India, to call for the records on the file of the 1st respondent in GSTIN: 33AHXPV5771B1ZU/ 2017-18 dated 20.12.2023 and consequential impugned order passed in vide Reference No.ZD3302240073811 dated 02.02.2024 passed by the 1st respondent under Section 73 of TNGST Act 2017 and to quash both as cryptic, non speaking, illegal, arbitrary, wholly without jurisdiction or pass such or other orders.

For Petitioner : Mr.S.Karunakar

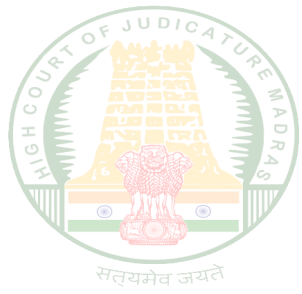
For Respondents : Mr.R.Sureshkumar for RR1 & 2
Additional Government Pleader

: Mr.K.Gokul for R3

ORDER

The challenge in the Writ Petition is the Order of Assessment and also the order passed in the Rectification Application.

2. Heard Mr.S.Karunakar, learned counsel for the petitioner, Mr.R.Sureshkumar, learned Additional Government Pleader appearing on behalf of the first and second respondents and Mr.K.Gokul, learned counsel appearing on behalf of the third respondent.

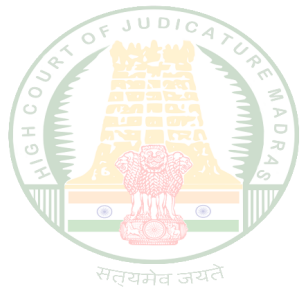


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3. The learned counsel for the petitioner would contend that the petitioner had filed a Rectification Application of the Order of Assessment dated 20.12.2023, within the given time. However, the first respondent without assigning any reasons as to how the order of assessment does not suffer from any apparent error and that too without giving any opportunity of hearing has rejected the application of rectification. Therefore, he would submit that the order impugned herein would have to be set aside with a direction to the first respondent.

4. On the contrary, the learned Additional Government Pleader would vehemently contend that the reasons need not be attributed in rejecting the rectification application. All that is required to be looked at by Authority as to whether based upon the rectification application, there had been an error apparant when the Authority had come to a conclusion and if there is no error apparant, the Authority can reject the Rectification Application without assigning reason. He would further submit that the Proviso apprehended to Section 161 of CGST Act mandating an opportunity of hearing would only arise, when the Assessing Officer *suo motu* initiates action for rectification and



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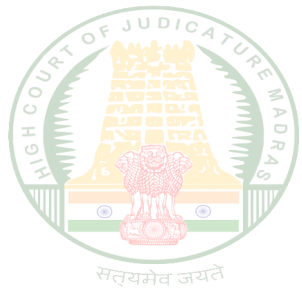
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if such rectification order is detrimental to the interest of the assessee only then an opportunity of hearing should be granted.

5. In the present case, an application had been made by the petitioner himself and in his application, he had not indicated the error apparent for the Assessing Officer to exercise his powers under Section 161 and therefore he would submit that no interference is required and prays this Court to dismiss the Writ Petition with liberty to the petitioner to work out his remedy in the manner known to law.

6. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

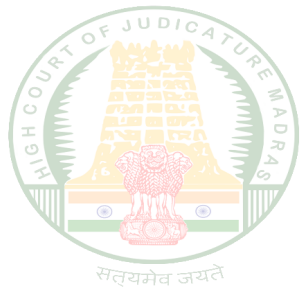
7. It is an admitted fact that the petitioner had made a Rectification Application. The order of rectification which is impugned would indicate that for the reasons given in the annexure to the said order, the Rectification Application is rejected.



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8. A perusal of the order does not also indicate that there had been no error apparant on the record to reject the rectification. He had only extracted the tables indicating the figures which the petitioner is liable to pay. There is also no reasonings as to why there is no error apparent on the face of the record. For this reason, the impugned order dated 02.02.2024 is liable to be set aside. Even though, strenuous efforts had been made by the learned Additional Government Pleader that no personal hearing need to be given when an application had been made at the instance of the assessee, I am not in agreementd with the learned Additional Government Pleader. The Provisio indicates that when an order is being made adverse to the assessee, then he should be given an opportunity of being heard when the rectification adversely affects any person. The principles of natural justice had been inbuilt by way of the 3rd Proviso to Section 161. If pursuant to a Rectification Application, if a rectification is made and if it adversely affects the assessee, Proviso 3 contemplates an opportunity of hearing to be given. However, when an Rectification Application is made at the instance of assessee and the rectification is being sought to be rejected without considering the reasons for rectification or by giving reasons as to why such rectification could not be entertained. It is also imperative that the assessee to



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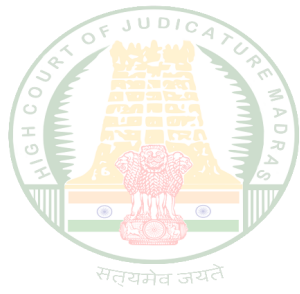
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9. For the aforesaid reasons, I am inclined to hold that the order of rectification passed by the first respondent dated 02.02.2024 is contrary to the provisions of Section 161 and in that aspect, the same alone is set aside and the Rectification Application filed by the petitioner shall be taken afresh by the first respondent and after giving an opportunity to the petitioner, the first respondent shall pass appropriate orders and in accordance with law. If any such order is made in the Rectification Application, it is for the petitioner to work out his remedy in the manner known to law.

10. With the above observations, this Writ Petition is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes / No
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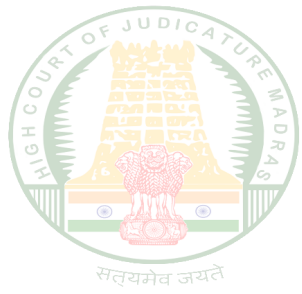


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