IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

Writ Petition Nos.7260, 6466, 8450, 8451, 6615, 9112, 9113, 7294, 7716 and 7717 of 2015 and connected M.Ps.

MRF Ltd.,
No.124, Greams Road,
Chennai - 600 006.
represented by its Dy. General Manager,
(Sales Tax),
Shri Swarup Kumar Patnaik ...Petitioner in W.P.No.7260 of 2015

M/s.Deepak Cables India Ltd,
No.7 Whirlpool Road, Thiruvandar Koil,
Puducherry 605 102.
Rep by its
Authorised Representative ...Petitioner in W.P.No.6466 of 2015

M/s. Lucas TVS Limited
Rep. by its General Manager-Finance & Secretary
R.S.No.46-49 Eripakkam Village,
Nettapakkam Commune,
Puducherry-605106. ...Petitioner in W.P.Nos.8450, 8451 of 2015

Inox Air Products Ltd.
Repd. by its General Manager,
Mr.MSVK Williams,
R.S.No.26/1 to 26/3 & 26/6,
Bahoor Main Road, Uchimedu Village,
Bahour Commune,
Puducherry-607 402. ...Petitioner in W.P.No.6615 of 2015

M/s.Lenovo (India) Pvt. Ltd,
Rep by its Deputy General Manager Legal,
19/2 and 19/2A, Cuddalore Main Road,
Edayarpalayam Village, Thavalakuppam,
Puducherry 605 007. ...Petitioner in W.P.Nos.9112, 9113 of 2015

MRF Ltd.
No.124 Greams Road, Chennai-600 006.
Rep. by its Deputy General Manager (Sales Tax)
Shri Swarup Patnaik. ...Petitioner in W.P.No.7294 of 2015

A.M.L. Steel Limited,
Represented by its Director Ankit Agarwal,
R.S. No.33/5 PT6 Nettapakkam,
Puducherry-605110. ...Petitioner in W.P.No.7716, 7717 of 2015

Vs.

The Commercial Tax Officer - (IAC-I),
Commercial Taxes Department,
Puducherry - 605 005. ...Respondent in W.P.No.7260 of 2015

Commercial Tax Officer (IAC II),
3rd Floor, Commercial Tax Complex,
100 Ft. Road, Ellapillai Chavady,
Puducherry 605 003, ...Respondent in W.P.No.6466 of 2015

The Commercial Tax Officer (IAC)-1
Commercial Taxes Department,
Room No.37 II Floor, 100 Feet Road,
Puducherry - 605005. ...Respondent in W.P.No.8450, 8451 of 2015

The Commercial Tax Officer (IAC-II),
Commercial Taxes Department,
Government of Puducherry,
Puducherry. ...Respondent in W.P.No.6615 of 2015

The Deputy Commercial Tax Officer (IAC)
Puducherry. ...Respondent in W.P.Nos.9912, 9913 of 2015

The Commercial Tax Officer (IAC),
Commercial Taxes Department,
Puducherry-605 005. ...Respondent in W.P.No.7294 of 2015

Commercial Tax Officer (IAC),
3rd Floor Commercial Taxes Complex,
100 ft. Road,
Ellapillai Chavady,
Puducherry-605003. ...Respondent in W.P.No.7716, 7717 of 2015

Petition under Article 226 of The Constitution of India praying for the issuance of

(a) Writ of Certiorarified Mandamus calling for the records of the respondent for the year 2010-11 in assessment order No.CST.34630002396/2010-11 dated 24.02.2015, quash the same and direct the respondent to rehear the matter afresh after giving an opportunity to physically produce all relevant documents and providing a reasonable personal hearing to the petitioner (in W.P.No.7260 of 2015)

(b) Writ of Certiorari to call for the records of the respondent in the impugned order CST.34540008023/2013-14 dt 7.2.2015 quash the same as violative of Section 24 of the Puducherry VAT Act 2007 and violative of the principles of natural justice. (in W.P.No. 6466 of 2015)

(c) Writ of Certiorarified Mandamus to call for the records of the respondent in CST. 34920007814/2008-09 and quash the order dated 24.02.2015 and further direct the respondent to accept the manual filing of Form F, Form H and Form C declarations and the export documents by the petitioner. (in W.P.No.8450 of 2015)

(d) Writ of Certiorarified Mandamus to call for the records of the respondent in CST. 34920007814/2009-10 and quash the order dated 24.02.2015 and further direct the respondent to accept the manual filing of Form F, Form H and Form C declarations and the export documents by the petitioner (in W.P.No.8451 of 2015)

(e) Writ of Certiorari to call for the records relating to the order in CST.34670008291/2013-14 dated 10.02.2015 passed by the Respondent quash the same as arbitrary and illegal. (in W.P.No.6615 of 2015)

(f)Writ of Certiorarified Mandamus to call for the records of the respondent in CST 34370004091/2012-13 and quash the order dt 27.2.2015 and further direct the respondent to accept the manual filing of Form F, Form I and Form C declarations and export documents by the petitioner (in W.P.No.9112 of 2015)

(g) Writ of Certiorarified Mandamus to call for the records of the respondent in CST 34370004091/2011-12 and quash the order dt 27.2.2015 and further direct the respondent to accept the manual filing of Form F, Form I and Form C declarations by the petitioner. (in W.P.No.9113 of 2015)

(h) Writ of Manadamus, directing the respondent to accept physical filing of Forms C/H/I/F in all pending assessments under the Central Sales Tax Act 1956 read with the Pondicherry VAT Act 2007 between assessment year 2007-08 and 2013-14. (in W.P.No.7294 of 2014)

(i) Writ of Certiorari to call for the impugned proceedings of the Respondent passed in TIN/ 34620000801/2013-2014 dated 16.02.2015 and quash the same. (in W.P.No.7716 of 2015)

(j) Writ of Certiorari to call for the impugned proceedings of the Respondent passed in TIN/ 34620000801/2013-2014 dated 16.02.2015 and quash the same. (in W.P.No.7717 of 2015)

For Petitioner in W.P.Nos.7260 & 7294 of 2015	:	Mr.C.Natarajan, S.C. for M/s.M.V.Swaroop
W.P.No.6466 of 2015	:	Mr.V.S.Manoj
W.P.No.6615 of 2015	:	Mr.Joseph Prabakar
W.P.Nos.9112 & 9113 of 2015	:	Mrs.Hema Muralikrishnan
W.P.Nos.7716 & 7717 of 2015	:	Mr.R.Raghavan
W.P.No.8450 & 8451 of 2015	:	Mr.R.L.Ramani, SC for Mr.B.Raveendran
For Respondent in all the W.Ps:		Mr.T.Murugesan, Spl.G.P.-cum-Sr.Public Prosecutor Assisted by Mrs.Mala, G.A. (Pondy)

C O M M O N O R D E R

(Order of the Court was made by R.SUDHAKAR,J.)

The above Writ Petitions have been filed challenging the assessment order passed by the Commercial Tax Officer in respect of each one of the assessee. The assessee in these cases are aggrieved by the assessment order passed by the competent authority on the ground that they have not submitted a part of declaration forms as required under law. Therefore, the impugned order proposed to demand differential tax. Each one of the petitioner/assessee are concerned with different types of declaration forms, but that has no consequence for the disposal of the present Writ Petitions, as we are concerned with the core issue as to whether there was a failure on the part of the Writ Petitioners to submit the statutory declaration forms and if there is a failure, whether they had violated any provision of law to be mulcted with tax liability in respect of each assessment year.

2. For the sake of convenience, we are now taking up the facts in relation to W.P.No.7260 of 2015.

3. The assessee in W.P.No.7260 of 2015 is engaged in the manufacture and sale of automotive tyres and tubes and other rubber products. They have manufacturing facilities in nine locations in different States and its sales office spread across the country. The petitioner has been filing monthly VAT returns under the Puducherry VAT Act, 2007 and the Rules in Form I as prescribed under Rule 5(1) of the Central Sales Tax (Pondichery) Rules, 1967. There is no dispute on these facts. Insofar as the present case is concerned, on 10.12.2014, the Commercial Tax Officer issued a notice in the following manner:

> "Take notice that, as per the Rule 52 read with Section 54 of the PVAT Act, 2007, you have to the file "Form CC" before 30th September of the year succeeding to which it relates. But, so far you have not file Form CC upto 2013-14 and hence, you are directed to file the form CC immediately.
>
> You are also directed to submit statutory form viz., Form C/F/I/H wherever concession/exemptions claimed under CST Act upto 2013-14."

4. Thereafter, on 10.2.2015, a final notice was issued by the Commercial Tax Officer stating that online returns filed by the dealer were admitted provisionally pending submissions of the declaration forms as the concessions/exemptions claimed are subject to production of Form C/F/H, as the case may be, under Rule 12(7) of the CST (Registration and Turnover) Rules, 1957. While issuing notice, the Authority invoked the provisions of Rule 12(7) of the Central Sales Tax Rules. Rule 12(7) and the proviso to the said Rule reads as follows:

> "12.(7) The declaration in Form C or Form F or the certificate in Form E-I or Form E-II shall be furnished to the prescribed authority with in three months after the end of the period to which the declaration or the certificate relates:

> Provided that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate with in the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit."

5. In the notice, it is stated that as the dealers did not file the declaration forms despite lapse of time as mentioned in Rule 12 (7), the Commercial Tax Officer proposed to reject the claim of concession/exemption and assess the turnover on higher rate of duty as applicable. It is pertinent to point out at this point of time that in this notice a specific direction was issued to the dealers to file the documents in support of the monthly returns filed. They were given time upto 19.2.2015 to submit relevant records and their objections, if any, on or before 19th February, 2015.

6. In response to the said notice, reply was submitted by the present Writ Petitioner dated 19th February, 2015, stating that in view of the voluminous transaction and the assessment is spread over to many assessment years, the assessee is trying to comply with the requirement of uploading the 'C' form details in the form of data. The assessee sought for further extension of time to upload the declaration forms stating that this process is time consuming.

7. For better clarity, we set out hereunder the details of the reply dated 19.2.2015 submitted by the assessee:

> ".... with the above network, we hope the department will understand the hardships being faced in collecting C-Forms and F-Forms. We have been making our regular and continuous efforts in collecting the Forms and reconciling the forms with our voluminous transactions. With great efforts, we have collected most of the Forms as per our reported turnover and ready to submit to the department.
>
> As a unique practice, in Pondicherry Department has advised the Assessees to submit the collected C Forms and F Forms through uploading in the department's website. As advised by the Department, we have started uploading received C-Foms in the website, and, we are happy to inform that, we have successfully completed the job for 2 Assessment years, viz., 2010-11 & 2011-12. We are in the process of uploading the Forms for remaining years and putting all round efforts.

Hence, we submit to inform that, the process is time consuming due to huge volume of data and dependability on unrestricted internet access. Inspite of putting one dedicated person exclusively on this job for the whole working day, the process is likely to take more weeks, as, the Department is expecting to do the uploading from the inception of VAT regime till date. Due to the special nature of work and expected level of accuracy, we are unable to outsource the job. Even if one Form is missing, it will have huge impact for us.

We request our goodselves to grant liberal time extension for completion of the job. While acknolwedging our earlier replies (in response to your Notices), we were granted 2 weeks time extension, but, we appeal that, such meagre time extension is highly inadequate comparing our volume of data and work involved.

Hence, we kindly appeal to our Hon'ble Authority to grant an extension of minimum 6 months time to complete the job. We assure to put all round efforts to expedite the job, to ensure early completion. As of now, we are ready to submit manual Forms on the advice of the Department."

(emphasis supplied)

8. It was highlighted in the above letter that the assessee was ready to submit manual declaration forms on the advice of the Department. The Officer, in the said letter endorsed that as a final opportunity, time granted upto 24.2.2015. On 20.2.2015, the assessee again sent a letter to the Commissioner, Commercial Taxes Department, which was acknowledged by the Department, stating that they were facing some difficulty in uploading the data, namely, the declaration forms, due to technical snag. We set out hereunder the details of the said letter:

"As a unique practice, the Department has advised assessees to upload the statutory form details online. You may appreciate to note that this is a new system introduced for the 1st time for online uploading of statutory form details in the departmental server since from the introduction of VAT Act, ie., From financial year 2007-08 and onwards. We are facing lot of difficulties in uploading the details. The server is also very slow. Many times network issue is there. For uploading details in the system, it is taking unreasonably longer time. We have already uploaded the details of statutory forms for the Financial Year 2010-11. We are in the process of uploading the details for the financial year 2011-12 and remaining years.

Further we request that this is a new system introduced by the department and it is taking unreasonably longer time to upload the details in the departmental server. So, we may be provided ample time to upload the details considering the huge volume of data involved in each financial year.

We request our goodselves to grant reasonable time for uploading of the details online. While acknowledging our earlier replies (in response to Your Notices), the AO has granted only 2 weeks time extension, which is not sufficient, considering the huge volume of data, number of financial years involved.

Considering the time required to upload the details in the server for each financial year we request you to give at least 3 months time to complete the details as per the requirement of the department. Alternatively we may be allowed to submit the original forms with statutory form details manually.

Hence, we kindly appeal to our Hon'ble Authority to grant an extension of minimum 3 months time to complete the job. We assure to put all round efforts to expedite the job, to ensure early completion. Otherwise, we request the Department to accept manual submission of Forms.

We solicit your support and consideration in granting 3 months additional time for submitting the online details in the departmental server and oblige."

9. Similar request was made by the assessee on the same day to the Development Commissioner -cum- Finance Secretary to Government pointing out the difficulties in uploading the details online primarily on the ground that the server was very slow and that the documents are voluminous. Thereafter, on 23.2.2015, they submitted a letter stating that physical C and F forms, without uploading (for assessment years 2008-09 to 2013-14), would be handed over. The note appended to the said letter reads as follows:

"Physical C Forms & F Forms, without uploading (for AY 2008-09 to 2013-14) will be handed over, on hearing from you. Indly held & do the needful."

10. This letter was followed by another letter dated 23.2.2015 requesting the authority to accept the physical forms. In the said letter, an endorsement has been made by the Commercial Tax Officer in the following manner:

"Pl. refer your letter dated 19/2/15 and my notings thereon. No extension of Time could be given."

11. Thereafter, on 24.2.2015, the Commercial Tax Officer has passed an order holding that the dealer had not submitted declaration forms until 23.2.2015, other than 'C' Forms for a certain value. The reasoning given by the Officer reads as follows:

> "The dealer was requested by this office notice dated 10/12/2014, 22/01/2015 to file the required declaration forms, but the dealer has not filed the forms. Hence, a Final Notice issued on 10/02/2015 for submission of Forms/objections and time given upto 19/02/2015, for which the dealer has requested 6 months extension of time. However time has been granted upto 24/02/2015 as a final opportunity as per the request letter dated 19/02/2015 submitted by the dealer. But the dealer has not submitted any Declaration forms until 23/02/2015 other than C Forms for a value of Rs.1346642171.00
>
> The Assessment can't be prolonged further and hence the Total and Taxable Turnover has been determined based on the return filed by the dealer for the year 2010-11 as detailed below as provided under CST Act 1956, as per proposition Notice dated 10/02/2015 rejecting the claim of concession/exemption since it is not supported by prescribed statutory forms."

12. From a reading of this impugned order, it appears that the entire case proceeded on the basis that no statutory declaration forms were submitted by the Writ Petitioner/assessee on the date of assessment. Fortunately, for the Writ Petitioner in W.P.No.7260 of 2015, the counter affidavit filed by the Department comes in aid, which states the contrary. The relevant portion of the said counter reads as follows:

> "16. I submit that in order to assess the CST turnover for the assessment year 2010-11, the respondent herein has issued notice vide dated 10.12.2014 to the petitioner to produce the required declaration in Form-C and F etc., so as to claim concession/exemption under the CST Act. However, the petitioner has not furnished the declaration in Form-C and F etc. in support of the claim of concession/exemption. Hence, the respondent has again sent another notice dated 22.1.2015. Further, I submit that the petitioner has not responded to the above said notices and as such the respondent has sent final notice to the petitioner with instructions to submit the delcaration forms on or before 19.2.2015

failing which order will be passed accordingly and no further extension of time will be considered. However, the petitioner has again leniently sought for another six months time vide letter dated 19.2.2015 to furnish the requisite declaration forms. However, the respondent in the above said letter itself has mentioned that final opportunity to furnish the declaration forms and granted time upto 24.2.2015. Even after sufficient opportunity given to the petitioner, he has not furnished the declaration forms within the stipulated period and again vide letter dated 23.2.2015, without uploading the declaration forms through online, requested to accept the manual forms which was rejected by the respondent. Further, the petitioner's representative in the said letter dated 24.2.2015 itself had stated that it was not feasible and not possible to upload the required declaration forms. Therefore, the respondent had no other alternative but for concluding the assessment and passing final assessment order on 24.2.2015. The same was duly served only on 25-02-2015. Therefore, the contention made by the petitioner that the respondent did not even wait till the expiry of the time alone is not correct and unsustainable."

(emphasis supplied)

13. Aggrieved by the above-said impugned order, the assessee is before this Court.

14. This now leads to the core issue as to whether the Authority could pass an assessment order on the premise that the assessee/Writ Petitioner in each case has not uploaded the declaration forms online in the manner required by the Department.

15. Mr.C.Natarajan, learned Senior Counsel appearing for the Writ Petitioner in W.P.No.7260 of 2015 pointed out that the purport of Section 6A(1) and (2) of the Central Sales Tax Act relating to Form F and Section 8(4) proviso insofar as 'C' Forms is concerned is for furnishing of such declaration forms to the Assessing Authority within the prescribed time. He further submits Section 13 relates to power of the Central Government to make rules, more particularly Section 13(1)(d), which provides the manner in which the declaration forms may be produced or furnished. Section 13(3) and (4) enables the State Government to make rules not inconsistent with the provisions of the Act.

16. He also submits that these Sections also speak about the declaration forms should be maintained and furnished. Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957 provides for the manner in which the single or multiple declaration forms to be maintained and furnished. According to the learned Senior Counsel, in some States the declaration forms are allowed to be downloaded and the buyer gives the original and duplicate in physical form. In some States, they still continue to issue the declaration forms in printed version and therefore, in the absence of any specific rule in the Pondicherry VAT Rules or in the Central Sales Tax Rules, the insistence by the Department that all these declaration forms should be uploaded online is an onerous condition, not required by law and as and when the original declaration forms are submitted at the time of assessment, they refused to accept such forms, despite the data already uploaded as required by the Department. Hence, the impugned order issued declining to extend the exemption/concession only on the ground that the dealer failed to submit the declaration forms online is bad.

17. Mr.T.Murugesan, learned Special Government Pleader (Pondy), appearing for the respondent submits that as against the impugned order, the petitioners have a right of appeal and the petitioners may file an appeal. He further submits, on instruction from the Officers present in Court, that the respondent is in the process of amending the Rules and it should be issued shortly. He further submits that if the assessees have produced the data sheets containing the details of 'C' forms in support of the invoices, the Department is willing to accept the same and proceed with the assessment on the basis of the 'C' Forms submitted in physical form at the time of assessment.

18. Heard learned Senior Counsel appearing for the petitioner and the learned Special Government Pleader (Pondy) appearing for the respondent and perused the materials placed before this Court.

19. Before going into the merits of the case, necessary provisions relating to the issue in question needs to be seen.

"Section 6 A, 8(4) and 13 of the Central Sales Tax Act, 1956:

6-A. Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale :-
(1) where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason

of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale.

(2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section(1) are true, he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed for the purpose of this Act to have been occasioned otherwise than as a result of sale.

Explanation: In this section "assessing authority", in relation to a dealer, means the authority for the time being competent to assess the tax payable by the dealer under this Act.

(3) Nothing contained in sub-section (2) shall preclude reassessment by the assessing authority on the ground of discovery of new facts or revision by a higher authority on the ground that the findings of the assessing authority are contrary to law, and such reassessment or revision may be done in accordance with the provisions of general sales tax of the State.

8. Rates of tax on sales in the course of inter-State trade or commerce:-- (1) Every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section(3); shall be liable to pay tax under this Act, which shall be three per cent, of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the Sales Tax Law of that State, whichever is lower;

(2).........

(3)........

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed Form obtained from the prescribed authority.
Provided that the declaration is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

13. POWER TO MAKE RULES .--(1) The Central Government may, by Notification in the Official Gazette, make Rules providing for -
(a).....
(b)....
(c)....
(d) the form in which and the particulars to be contained in any declaration or certificate to be given under this Act 2[the state of origin of such form or certificate and the time within which any such certificate or declaration shall be produced or furnished;
.....
(2)......
(3) The State Government may make Rules, not inconsistent with the provisions of this Act and the Rules made under sub-section (1), to carry out the purposes of this Act.
(4) In particular and without prejudice to powers conferred by sub-section (3), the State Government may make Rules for all or any of the following purposes, namely;--
(a) the publication of lists of registered dealers, of the amendments made in such list from time to time, and the particulars to be contained in such lists;
(aa) the manner in which security may be furnished under sub-section (2-A) or sub-section (3-A) or sub-section (3-C) of Section 7 and the manner in which and the time within which any deficiency may be made up under subsection (3-E) of that section;
(b) the form and manner in which accounts relating to sales in the course of inter-State trade or commerce shall be kept by registered dealers.
(c) the furnishing of any information relating to the stocks of goods of purchases, sales and delivers of goods by, any dealer or any other information relating to his

business as may be necessary for the purposes of this Act;
(d) the inspection of any books; accounts or documents required to be kept under this Act, the entry into any premises in all reasonable times for the purposes of searching for any such books, accounts or documents kept or suspected to be kept in such premises and the seizure of such books, accounts or documents;
(e) the authority from whom, the conditions subject to which and the fees subject to payment of which any form of certificate prescribed under clause [a] of the first proviso to sub-section (2) of section 6 or declaration prescribed under sub-section (1) of section 6-A or subsection (4) of section 8 may be obtained, the manner in which such forms shall be kept in custody and records relating there to maintained and the manner in which any such form may be used and any such certificate or declaration may be furnished;
(ee) the form and manner in which, and the authority to whom, an appeal may be preferred under sub-section[3-H] of section 7, the procedure to be followed in hearing such appeals and the fees payable in respect of such appeals;
(f) in the case of an Undivided Hindu Family, association, club, society, firm or company or in the case of a person who carries on business as a guardian or trustee or otherwise on behalf of another person, the furnishing of a declaration stating the name of the person who shall be deemed to be the manager in relation to the business of the dealer in the State and the form in which such declaration may be given.
(g) the time within which , the manner in which and the authorities to whom any change in the ownership of any business or in the name, place or nature of any business carried on by any dealer shall be furnished.

Rule 5(1) and 14(4) of the Central Sales Tax (Pondicherry) rules, 1967:

5.(1) Every dealer other than those specified in the proviso to Rule 11 of the Central Sales Tax (Registration and Turnover) Rules, 1957, registered under section 7 of the Act, shall submit a return of his transactions in the course of interstate trade or commerce or in the course of export of the goods out of the Territory of India in Form 1 together with the connected declaration form or duplicate of such form where the original has been lost and the certificates in Forms D, E-I and E-II so as to reach the assessing authority on or before the 25th of each month showing the turnover for the preceding month and the amount or amounts collected by way of tax together with a challan or a crossed cheque in favour of the assessing authority for the payment of tax due thereon under the Act."

14. (4) Notwithstanding anything contained in the foregoing and in sub-rules(1) and (2) of rule 5, the selling dealer may, instead of attaching the form of declaration to the return in Form 1, keep it in his custody subject to the condition that he maintains a register in Form 9 showing serially and chronologically the receipt of the forms of declaration from the purchasing dealers and submits all the forms of declaration relating to the year at any time before the final assessment of the accounts for that year. Similarly the certificates in Forms D, E-I and E-II referred to in sub-rules (1) and (2) of rule 5 may be submitted at any time before the final assessment of the accounts for that year.

Rule 12(1), (5) and (7) of the Central Sales Tax (Registration & Turnover Rules):

12.(1) The declaration and the certificate referred to in sub-section (4) of Section 8 shall be in Forms C and D respectively;
Provided that Form C in force before the commencement of the Central Sales Tax Registration and Turnover (Amendment) Rules, 1974, or before the commencement of the Central Sales Tax Registration and Turnover (Amendment) Rules, 1976, may also be used up to the 31st December, 17[31st December, 1979], with suitable modifications:
....
(5) The declaration referred to in sub-section (1) of Section 6- A shall be in Form F
....
(7) The declaration in Form C or Form F or the certificate in Form E-I or Form E-II shall be furnished to the prescribed authority with in three months after the end of the period to which the declaration or the certificate relates:

Provided that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate with in the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit."

(emphasis supplied)

20. Sections 6A and 8(4) of the Central Sales Tax Act provides that the assessee should furnish the declaration within the prescribed time. The proviso to Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957 provides that if the prescribed authority is satisfied with the sufficient cause shown by the assessee, he may allow the assessee to furnish the declaration within such further time. Rule 14(4) of the Central Sales Tax (Pondicherry) Rules, 1967 provides that the assessee can submit all the forms of declaration relating to the year at any time before the final assessment of the accounts for that year.

21. A reading of the above provisions makes it clear that there is no provision for the present under the Puducherry Value Added Tax Rules to submit the declaration forms in the electronic mode as has been suggested by the Department; that the assessee in each of the Writ Petitions has been complying with the requirement at the instance by the jurisdictional officer and that is why they have been pleading for time primarily on the ground that the voluminous records make it difficult for them to upload the details required by the Department and further the server does not provide for effective and speedy uploading of data. This has been the consistent stand of each one of the Writ Petitioners in their representations and letters addressed to the Department. The bone of contention of the petitioners is that the declaration forms submitted in its original form have not been accepted by the Department in many cases for the reason that it is not in the electronic form and uploaded.

22. In the light of the above, the short issue that involves in the above Writ Petitions is whether the Department at the time of completing the assessment can insist upon the uploading of the declaration forms online when the assessee submits the same in the physical form, as has been presented to them by their buyers.

23. We are inclined to accept the submission made by the learned Senior Counsel appearing for the petitioner, as both on fact and law, we find that the impugned orders have been passed on the misconception of the provisions as mentioned above. When there is no specific indication in the Central Sales Tax Act or the Puducherry Value Added Tax Rules to provide the declaration forms in electronic

form, we fail to understand that for the convenience of the Department how the assessee could be made to suffer. The fact that the declaration forms were submitted, but not accepted by the Department for the afore-said reason is evident from the counter affidavit, though the impugned order states otherwise. A reading of the various correspondences between the assessee and the Department, it is clear that the delay in submitting the declaration forms was only at the instance of the Department that the data sheet should be uploaded online together with the declaration forms.

24. We fail to understand as to how the assessee could be asked to upload the declaration forms online in the absence of facility for such purpose. It is stated by the Officers instructing the learned Special Government Pleader that they are in the process of preparing the Rules for the purpose of change over to electronic form and it should be issued shortly. They further states that if the assessees have uploaded the data sheets containing details of the 'C' forms in support of the invoices, which assessees are wiling to do voluntarily, the Department is willing to accept the same and proceed with the assessment on the basis of the 'C' forms to be submitted in physical form at the time of assessment.

25. The Department's insistence that it should be uploaded online is not in consonance with any of the Rules either under the Central Sales Tax Rules or Puducherry Value Added Tax Rules. Since it is not in dispute that each of the assessee except the cases where there is objection have already submitted their original declaration forms, whether C, F or I, as the case may be, before the Assessing Authority, he is bound to take the same for completing the assessment without insisting on uploading the declaration forms in electronic format.

26. Assuming there is a delay, we find no reason why it should not be condoned in the light of the decision in the case of State Of H.P. and others vs Gujarat Ambuja Cement Ltd. and another reported in 142 STC 1 (SC), wherein the Supreme Court while dealing with the belated filing of statutory forms held as follows:

> "It was urged on behalf of the appellant-State that declaration forms under the Central Act were not filed within the time and/or were defective. That does not in reality amount to non-compliance of a statutory provision. The respondent No.1-company was claiming exemption and, therefore, had not filed the declaration forms. Some of the forms which were filed were treated to be defective. Undisputedly, before the revisional authority a prayer was made for grant of opportunity to

rectify the defects, if any. That was turned down. It is to be noted that under Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957 (in short the `Registration Rules') the declaration form can be filed at a subsequent point of time and not necessarily along with returns. On an application being made before the Assessing Officer the exemption can be granted. The object of the Rule is to ensure that the assessee is not denied a benefit which is available to it under law on a technical plea. The Assessing Officer is empowered to grant time. That means that the provisions requiring filing of declaration forms along with the return is a directory provision and not a mandatory provision. In a given case even the declaration forms can be filed before the appellate authority as an appeal is continuation of the assessment proceedings. In a given case, if the appellate authority is satisfied that assessee was prevented by reasonable and sufficient cause which dis-enabled him to file the forms in time, it can be accepted. It can also be accepted as additional evidence in support of the claim for deduction. In the instant case, respondent No.1-company made a specific request before the revisional authority which was turned down. Therefore, the question of any non-compliance with the relevant statutes does not arise. It was noted by this Court in Sahney Steel and Press Works Ltd. and Anr. v. Commercial Tax Officer and Ors., [1985] 4 SCC 173 that even in a given case, an assessee can be given an opportunity to collect Declaration Forms and furnish them to the assessing authority if the challenge of the assessee to taxability of a particular transaction is turned down."

27. The approach of the Department should be to ensure that what the assessee is rightfully entitled to should be extended to the assessee without harping on technicalities. The impugned orders passed against the petitioners in the above Writ Petitions proceeded on the premise that no statutory declaration forms had been submitted, because the same had not been uploaded in electronic form, which reason is not found in the impugned order but can be culled out from correspondence. It is a clear error on the part of the Competent Authority. The department has exceeded its jurisdiction in imposing a condition not provided by law.

28. We also find that the plea of alternate remedy raised by Sri.T.Murugesan, learned Special Government Pleader (Pondy) cannot hold water in the facts of the present case, as we find that the

impugned orders have been passed in breach of the provisions of the Act.

29. We, therefore, pass the following order:

All the above Writ Petitions are allowed and the impugned orders are set aside and the Assessing Officer is directed to proceed with the assessment afresh after receiving the statutory declarations in physical form and complete the assessment. No costs. Consequently, connected Miscellaneous Petitions are closed.

30. Mr.C.Natarajan, learned Senior Counsel pointed out that in view of the impugned order passed and the consequent tax liability, the Department has withheld the downloading and issuance of statutory declaration forms, thereby the entire business of the petitioners have come to a standstill causing great prejudice to the other State vendors, which could be otherwise avoided if these documents are made available.

31. In view of the setting aside of the impugned orders, the Department is directed to allow such of those Writ Petitioners who have succeeded in these Writ Petitions to download the forms. The Assessing Authority is also directed to accept the statutory declarations in physical form and complete the assessment.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

sl/sasi

To

1. The Commercial Tax Officer - (IAC-I),
Commercial Taxes Department,
Puducherry - 605 005.

2. The Commercial Tax Officer (IAC-II),
Commercial Taxes Department,
Govt. of Puducherry,
Puducherry.

3. The Commercial Tax Officer (IAC-II),
3rd Floor, Commercial Tax Complex,
100 Ft. Road, Ellapillai Chavady,
Puducherry-605003.

4. The Deputy Commercial Tax Officer (IAC),
Puducherry.

5. The Commercial Tax Officer (IAC),
3rd Floore, Commercial Taxes Complex,
100 Ft. Road, Ellapillai Chavady,
Puducherry-605003.

10 CCs to Senior Govt. Pleader cum Sr.Public Prosecutor for Puducherry SR No. 31613 to 31615, 31617 to 31619, 31623 to 31625, 31627

1 CC to Mr.B.Ravendran, Advocate SR.No. 31610

1 CC to Mr.K.Murali Krishnan, Advocate SR.No. 31611

2 CCs to Mr.N.Murali, Advocate SR.No. 31411

1 CC to Mr.K.Vaitheeswaran, Advocate SR.No. 31378

1 CC to Mr.M.V.Swaroop, Advocate SR.No. 31338

1 CC to Mr.Joseph Prabakar, Advocate SR.No. 31381

W.P.Nos.7260, 6466, 8450, 8451,
6615, 9112, 9113, 7294,
7716 and 7717 of 2015
and connected M.Ps.

MSM (CO)
PSI (19.08.2015)