IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.05.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P. No. 18061 of 2016
&
W.M.P. No. 15847 of 2016

Sri Rukmani Rolling Mill Private Limited,
rep. by its Director,
Yaduveer Ganapatisagar,
S.Y. No. 267/268, Kothajogur Village,
Komaranapalli - Panchayat,
Denkanikottai T.K.
Krishnagiri (Dt) - 635 114. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Hosur (South) Assessment Circle,
Hosur. ... Respondent

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records on the files of the respondent in CST No. 944962/2014-15 dated 22.02.2016 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice and that of the principle laid down by this Honourable Court in the judgment reported in (2007) 295 ITR 303 (Mad) (V. Selladurai Vs. Chief Commissioner of Income Tax (OSD) and another) further direct the respondent to pass orders afresh as requested by the petitioner vide his representation dated 25.04.2016.

For Petitioner : Mr.R. Senniappan

For Respondent : Mr.V. Haribabu

O R D E R

This writ petition is filed for issue of a Writ of Certiorarified Mandamus to call for the records on the files of the respondent in CST No. 944962/2014-15 dated 22.02.2016 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice and that of the principle laid down by this Honourable Court in the judgment reported in (2007) 295 ITR 303 (Mad) (V. Selladurai Vs. Chief Commissioner of Income Tax (OSD) and another) and further direct the respondent to pass orders afresh as requested by the petitioner vide his representation dated 25.04.2016.

2. The petitioner is a Limited Company having Certificate of Registration under TNVAT Act 2006 in TIN No. 33343364301 and also having a certificate of registration under CST Act 1956 in CST No. 944962 dated 10.09.2007 and an assessee on the file of the respondent herein. The nature of business carried on by the Company is manufacturing finished products such as M.S. Angles and M.S. Channels by using raw materials such as ingots billets sponge iron, iron scraps and selling such M.S. Angles and M.S. Channels locally and inter-state trade and despatching such M.S. Angles and M.S. Channels on stock transfers to his branch in Kerala State and to consignment agent in other States. The petitioner had been issued with a notice dated 12.11.2015 under Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006 read with Section 9(2) of the Central Sales Tax Act, 1956, on 14.12.2016 and thereby, proposed to reject the claim of exemption in so far as the transactions related to consignment and Branch transfer is concerned on the ground that the petitioner had not obtained and produced the requisite declarations in From F for their claim. However, the petitioner awaited his further notice fixing date for personal hearing so as to enable to obtain and produce the requisite forms in support of his claim for exemption. Though the petitioner obtained all the requisite forms in the mean time and waited for personal hearing, the respondent had passed final orders on 22.02.2016 and confirmed his proposal by levying tax , that too, on the exempted turnover and served the order on 12.04.2016 without grant of such opportunity for personal appearance which, according to the petitioner, is mandatory requirement in accordance with Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006. Further, according to the petitioner, in the impugned order, while levying tax at the rate of 5% on the turnover of Rs.53,99,88,582/-, the respondent had wrongly imposed at Rs.7,69,99,429/- instead of correct amount of Rs.2,69,99,429/- which is patently clerical and calculation error and the petitioner had, however, given application dated

25.04.2016 pointing out this mistake besides seeking request to accept the requisite declarations in Form F which cover up all the turnover in question with details/statement of forms and submitted the application under Section 84 of the TNVAT Act, 2006 for fresh assessment. The said application dated 25.04.2016 had been submitted in person on 25.04.2016 itself and one more copy had also been sent to the respondent on 04.05.2016 by registered post and the said application is admittedly pending consideration before the respondent, as on date. Hence, the petitioner has come up with the present writ petition for the relief aforesaid.

3. Heard the learned counsel on either side.

4. It is brought to the notice of this Court by the learned counsel for the petitioner, that, in similar circumstances, in the judgment rendered in (AUDIO PEOPLE V. CTO, PONDY BAZAAR ASSESSMENT CIRCLE, CHENNAI) reported in (2016) 89 VST 397 (Mad), this Court, relying on the circular issued by the Commissioner of Commercial Taxes, Chennai dated February, 1, 2000, based on the Full Bench's judgment of this Court rendered in Arulmurugan's case ((1982) 51 STC 382 (Mad) (FB), allowed the writ petition and directed the respondent therein to accept form I filed by the petitioner for the sales made to "SEZ" and pass orders afresh in accordance with law. The relevant portion of the judgment is extracted hereunder:

> "9. ....The facts which are not disputed in the cases on hand show that the petitioner is regularly filing their monthly returns and complying with the statutory requirements. The respondent had also accepted the turnover reported by the petitioner as correct and determined the same. However, for want of form C and form I, the respondent adopted higher rate of tax at 14.5 per cent, which in my view, cannot be sustained in view of a circular dated February 1, 2000, issued by the Commissioner of Commercial Taxes, Chennai. For better appreciation, the same is reproduced hereunder:
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> > "the first original assessment order is to be passed with the maximum available C forms. However, where the party subsequently produced C forms from other States invoking the provision that he (assessee) had tried his best, but it was beyond his control, because C forms were either not readily available or not readily issued in those States, the assessing officers have to be liberal in reopening the reassessing of such cases. Further the High Court of Madras has held in the case of Arulmurugan and Company reported in

[1982] 51 STC 381 (Mad) [FB] that the proviso to Section 8(4) does not insist that the assessee should establish before the prescribed authority that he has prevented by sufficient cause from filing the C forms intime. 'Sufficient Cause' spoken of Section 8(4) is sufficient cause which appeals to the mind of the authority concerned and which enables it to allow further time without bothering about any onus on the assessees. Following the decision, this facility must be extended without fail. Instead of driving the assessee to go on appeal for this simple matter and getting case remanded by the appellate forum for reopening and considering the C forms filed at the time of hearing the appeal, the assessing officers themselves may reopen the cases, admit the new C forms, check on their correctness and genuineness, and pass revised assessment orders, as long as the period does not exceed the period of limitation. Thus, the instruction insists that 'sufficient cause' spoken of section 8(4) is sufficient cause which appeals to the mind of the authority concerned and which enables it to allow further time without bothering about any onus on the assessees. Hence, even if the dealer fails to explain the reason for the delay, the respondent has to independently apply his mind and decide about the C forms, without insisting the onus on the assessee."

10. The abovesaid circular itself has been based on the basis of Arulmurugan's case [1982] 51 STC 381 (mad) [FB] ; CDJ 1982 MHC 132 passed by the Full Bench of this Court. Relevant portion of the said judgment is extracted below (pages 395 and 396 in 51 STC):

"19. We do not think there is any room for the perplexity given expression to by the learned Government Pleader. Given the assessing authority's undoubted power to allow further time for C forms to be filed on sufficient cause, the rest of it is mere proceudre or follow up action. Where the assessig authority is satisfied, in a given case, about the existence of sufficient cause, it must necessarily be followed up by appropriate action, such as reopening the assessment already completed. Perhaps the requisite corrective action can be taken by invoking the assessing authority's statutory power of rectification of mistakes. Even otherwise, the implementation, in appropriate cases, of the power to allow furthre time cannot be withheld on the exucse that there is no express provision either in the statute or in the statutory rules for reopening the assessment. When the power is there and the facts are there demanding its exercise, the implementation must be done as a matter of course, on the doctrine of implied or ancillary powers. Where there is a power, and where there is a will, there will be a way. It is, however, unnecessary to pursue the line of discussion further, because the particular problem we are concerned with in the two cases before us is quite different. What we are asked to consider, and what we have been engaged in discussing so far, is whether an appellate authority has the same power as the assessing authority to allow further time for accepting C forms, and not how and by what process the assessing authority itself could exercise the power after the completion of assessment.

20. We may now turn to the facts of each of the two individual references before us. In both the cases, the assessee concerned did not file C forms with the assessing authority before the completion of the assessments. Naturally, therefore, the turnovers in question were charged to tax at the rate of 10 per cent, instead of at the concessional rate of four per cent. Both the assessees appealed against their respective assessments. In both the cases, leave to file the relevant C forms was asked for, at the appellate stage. The Appellate Assistant Commissioner, however, declined to receive the C forms, and confirmed the assessments. On further appeal before the Tribunal, the assessees produced the C forms once again. At this stage, the Tribunal entertained them. While doing so, the Tribunal felt satisfied that there was sufficient cause for not filing the C forms before the assessments were over. The final orders of the Tribunal, however, were different in the two cases. In one case, the Tribunal set aside the assessment and directed the assessing authority to make the assessment fresh on the basis of the C forms received at the appellate stage. In the other case, without setting aside the assssment, the

Tribunal forwarded the C forms to the assessing authority, directing that authority to scrutinise the C forms and find out if they complied with the formalities.

21. Having regard to the considerations which we have set out in the foregoing paragraphs, we must uphold the decision of the Tribunal in both the cases. We hold that the Tribunal has the power to receive C forms at the time of the appeal, for sufficient cause. The Tribunal can then proceed to the next step of applying the concessional rate of tax to the turnover covered by the C forms. Or the Tribunal may remand the case to the Appellate Assistant Commissioner. The remand may be for the specific purpose of going into the question of sufficient cause. The remand may also be loaded with a finding by the Tribunal that there has been sufficient cause, leaving the scrutiny of the C forms alone to be undertaken on remand. The Tribunal may, if satisfied about the sufficient cause, set aside even the assessment order, and direct the assessing authority to re-do the assessment, in which event there would be no occasion for the assessing authority to go into any question of 'delay' in filing the C forms, for with the setting aside of the assessment the whole thing is once again at large. It is needless to add that whatever has been stated by us as respects the Tribunal's power and the modes of its exercise apply, mutatis mutandis, to the Appellate Assistant Commissioner in like situations occurring in the appeals before him."

11. In view of the above said Full Bench judgment of this Court and also the circular dated February 1, 2000 issued by the Commissioner of Commercial Taxes, Chennai, the writ petition is allowed by setting aside the impugned orders dated December 6, 2015 and January 21, 2016 and directing the respondent to accept form I filed by the petitioner on January 19, 2016 for the sales made to "SEZ" for the assessment year 2011-2012 and pass orders afresh in accordance with law.

5. In the light of the above order passed by this Court, following the Full Bench's Judgment of this Court and the Circular dated February 1, 2000 issued by the Commissioner of Commercial Taxes, Chennai, the writ petition is allowed by

setting aside the impugned order dated 22.02.2016 and directing the respondent to accept form "F" filed by the petitioner for the assessment year 2014-2015 and pass orders afresh in accordance with law. No costs. Connected W.M.P. is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nv

To

The Assistant Commissioner (CT),
Hosur (South) Assessment Circle,
Hosur.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.28639
+1cc to the Special Government Pleader(T), S.R.No.28525

W.P. NO. 18061 of 2016

PUR(CO)
CA(26/05/2016)