IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVATION: 25.01.2016

DATE OF PRONOUNCEMENT: 23.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.Nos.40900 to 40905 of 2015
MP.Nos. 1 to 1, 2 to 2 and 3 to 3 of 2015

M/s.Pandi Devi Oil Private Limited
by its Director, Thirubuvanai
Pondicherry 605107 Petitioner in all WPs

Vs

1.The Additional Deputy Commercial Tax Officer (IAC)
Room No.39, III Floor, 100 Feet Road, Pondicherry-5

2.The Branch Manager, Bank of India
Pondicherry. Respondents in all WPs

Prayer:- WP.No.40900 of 2015 is filed to issue a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in TIN 34620013993/ 74/2014-2015, dated 13.5.2015 addressed to the 2nd Respondent and to quash the same and to direct the 1st Respondent to rectify the assessment order dated 20.2.2015, passed for the assessment year CST 34620013993/2011-2012, based on the rectification application, dated 23.3.2015 of the Petitioner.

WP.No.40901 of 2015 is filed to issue a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in TIN 34620013993/ 74/2014-2015, dated 13.5.2015 addressed to the 2nd Respondent and to quash the same and to direct the 1st Respondent to rectify the assessment order dated 20.2.2015 passed for the assessment year TIN 34620013993/2011-2012, based on the rectification application, dated 23.3.2015 of the Petitioner.

WP.No.40902 of 2015 is filed to issue a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in TIN 34620013993/ 74/2014-2015, dated 13.5.2015 addressed to the 2nd Respondent and to quash the same and to direct the 1st Respondent to rectify the assessment order dated 20.2.2015 passed for the assessment year CST 34620013993/2012-2013, based on the rectification application, dated 13.7.2015 of the Petitioner.

WP.No.40903 of 2015 is filed to issue a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in TIN 34620013993/ 74/2014-2015, dated 13.5.2015 addressed to the 2nd Respondent and to quash the same and to direct the 1st Respondent to rectify the assessment order dated 20.2.2015 passed for the assessment year CST 34620013993/2012-2013, based on the rectification application, dated 13.7.2015 of the Petitioner.

WP.No.40904 of 2015 is filed to issue a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in TIN 34620013993/ 74/2014-2015, dated 13.5.2015 addressed to the 2nd Respondent and to quash the same in so far as the assessment year CST 2013-2014 is concerned, because the attachment has been made without there being an assessment order passed for the assessment year CST 2013-2014.

WP.No.40905 of 2015 is filed to issue a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in TIN 34620013993/ 74/2014-2015, dated 13.5.2015 addressed to the 2nd Respondent and to quash the same in so far as the assessment year TIN 2013-2014 is concerned, because the attachment has been made without there being an assessment order passed for the assessment year TIN 2013-2014.

For Petitioner : P.Rajkumar

For Respondents : Mr.M.Govindaraj, GP(Pondicherry)

COMMON ORDER

In these Writ Petitions, the Petitioner seeks to quash the impugned order of attachment, dated 13.5.2015, addressed to the 2nd Respondent Bank, attaching the bank account of the Petitioner towards the arrears of tax under the provisions of the Pondicherry Value Added Tax Act and the Central Sales Tax Act for the assessment years 2011-2012 to 2013-2014 and to direct the 1st Respondent to rectify the assessment orders, dated 20.2.2015, made for the assessment years CST 34620013993/2011-2012, TIN CST 34620013993/ 2011-2012, CST 34620013993/2012-2013 and TIN CST 34620013993/2012-2013, based on the rectification applications dated 23.3.2015 and 13.7.2015 of the Petitioner and to quash the same in so far as the assessment year CST 2013-2014 and TIN 2013-2014 are concerned, because the attachment has been made without there being an assessment order passed for the assessment years CST 2013-2014 and TIN 2013-2014.

2. The case of the Petitioner in all these Writ Petitions is as follows:-

2.1. The Petitioner is the manufacturer of vegetable oil and a registered dealer under the Pondicherry Value Added Tax Act and also under the Central Sales Tax Act, 1956. The Petitioner used to buy imported RBD Palm Oil from various importers and transport the oil to its factory at Thirubuvani at Pondicherry. The Petitioner is effecting local sales, inter-state sales and also stock transfers. The local sales of refined vegetable oil is taxable at 5% and the fatty acid oil is taxable at 3%. For the assessment years, CST 2011-2012, 2012-2013 and 2013-2014, the Petitioner effected local sales, inter-state sales and also stock transfers and reported the same in the monthly returns under the PVAT Act and the CST Act. For the assessment years CST 2011-2012 and CST 2012-2013, the 1st Respondent issued a notice dated 9.1.2015, proposing to levy tax at 5% for the inter-state sales turnover for non-submission of C forms and in respect of stock transfer related turnover, it was proposed to levy tax at the rate of 5% for non-submission of F form declarations and proposing to levy tax at 5% for the inter-state sales turnover for non-submission of 'C' forms respectively.

2.2. Since the Petitioner did not file the C forms and F forms before the 1st Respondent within time, the 1st Respondent passed the assessment orders on 20.02.2015, levying tax on the inter-state sales turnover not covered by C forms and also levied tax on the stock transfer turnover for want of F form declarations. For the assessment year TIN 2011-2012, the 1st Respondent, in the assessment order dated 20.2.2015, has wrongly levied tax at the rate of 5%, instead of the correct rate of tax at 3% on the turnover relating to refined vegetable oil and also wrongly levied tax at the rate of 5%, instead of the correct rate of tax at 3% on the turnover relating to Fatty Acid Oil. In respect of the assessment year TIN 2012-2013, the 1st Respondent in the assessment order dated 20.02.2015 has reversed the input tax credit of Rs.5,49,036/- for want of C forms. Thereafter, for the assessment year 2011-2012, the Petitioner submitted C forms and F form declarations on line and also filed application dated 23.3.2015, giving reasons for the belated filing, for rectification of the assessment orders dated 20.2.2015 passed for the assessment years CST 2011-2012 and TIN 2011-2012. However, no order has been passed on the said rectification applications. But, however, 1st Respondent issued the impugned notice, dated 13.5.2015 to the 2nd Respondent, attaching the Petitioner's bank account towards the arrears of tax for the assessment years 2011-2012 to 2013-2014 under the CST Act and also PVAT Act. Thereafter, the Petitioner approached the 1st Respondent requesting to lift the bank attachment and to pass fresh assessment orders for the assessment years CST 2011-2012 and TIN 2011-2012 based on the said rectification applications. Further, in respect of the assessment year CST 2013-2014 and TIN 2013-2014, the Petitioner brought to the attention of the 1st Respondent that without there being an assessment order passed by the 1st Respondent for the above two assessment years, the attachment of their bank account towards arrears of tax is without authority of law and so requested to withdraw the same. In the mean time, the Petitioner submitted some 'C' forms for the assessment year CST 2012-2013 and also filed an application dated 13.07.2015 before the 1st Respondent, requesting to rectify the assessment order dated 20.2.2015. Further, the Petitioner also filed another application dated 13.07.2015, requesting the 1st Respondent to rectify the assessment order dated 20.2.2015 passed for the assessment year TIN 2012-2013 to grant the benefit of input tax credit on the strength of the C forms now filed by them. However, the 1st Respondent till date has not rectified the assessment orders dated 20.2.2015 passed for the assessment years CST 2011-2012, TIN 2011-2012, CST 2012-2013 and TIN 2012-2013 based on the rectification applications dated 23.3.2015 and 13.07.2015. Further, in respect of bank attachment made for the above assessment years and also for the assessment year CST 2013-2014 and TIN 2013-2014, the 1st Respondent has not taken any action. Further, without there being an assessment order for the assessment year CST 2013-2014 and TIN 2013-2014, the attachment of the bank account of the Petitioner towards arrears of tax is without authority of law. In such circumstances, these Writ Petitions have been filed for the reliefs as stated above.

3. The 1st Respondent has filed a common counter affidavit, wherein it is averred as follows:-

3.1. The Petitioner is engaged in the business of selling Edible Oil and Vegetable Oil within the State as well as outside the State. For the Assessment years 2011-2012 and 2012-2013, the Sale of Oil is exempted from 01.04.2011 till 31.12.2011 and taxable @ 3% from 01.01.2012 till 31.07.2013. The Sale of oil is taxable @ 2% for the interstate sales for the assessment years 2011-2012 and 2012-2013 against C-Forms. In order to avail the concessional rate of tax, the dealers are bound to submit statutory forms. Even though, the Petitioner has availed the concessional rate of tax, but failed to furnish the requisite statutory forms, within the stipulated period as prescribed in the rules.

3.2. The assessment relates to the years 2011-2012 and 2012-2013. The Petitioner ought to have submitted the above said statutory forms on or before 30.06.2012 for the assessment year 2011-2012 and on or before 30.06.2013 for the assessment year 2012-2013. Further, the Petitioner has failed to produce the same even at the time of the finalization of assessment for the years 2011-2012 and 2012-2013. Even the Petitioner has stated that the required forms could not be obtained and filed within the time limit granted in the notices dated 9.1.2015. However, the Petitioner has not utilized the said opportunity and therefore, the respondent has passed the assessment orders dated 20.2.2015 for the assessment years 2011-2012 and 2012-2013. The Petitioner sent a representation dated 23.03.2015 and requested to revise the assessment order. Once the final assessment order is issued to the Petitioner, it attains finality and it cannot be revised now and then. Further, the Petitioner is having arrears of tax for the assessment years 2011-2012 and 2012-2013 and it is sufficient to attach the bank account of the Petitioner for non-payment of arrears of tax for the said assessment years and therefore, there is no necessity to pass an assessment order as required by the Petitioner for the assessment year 2013-2014. Therefore, the action of the 1st respondent is according to the law. Further, the Petitioner filed a similar writ petition for similar relief in WP.No.22120/2015 for the assessment years 2011-2012 and 2012-2013 and hence, these Writ Petitions are barred by res-judicata and liable to be dismissed.

4. The learned counsel for the Petitioner contended that the action of the 1st Respondent in attaching the bank account of the Petitioner, without considering the rectification applications of the Petitioner is unsustainable and that if the C forms and Form F declarations uploaded on line had been considered, the demand would have been reduced considerably and that the non-consideration of the rectification applications filed by the Petitioner is clearly contrary to the provisions of the Act. The learned counsel further submitted that without there being an assessment order for the assessment year CST 2013-2014 and TIN 2013-2014, the attachment of the bank account of the Petitioner towards arrears of tax is without authority of law and prayed for allowing these Writ Petitions.

5. The learned Government Pleader for the 1st Respondent contended that in order to avail the concessional rate of tax, the dealers are bound to submit statutory forms as per Rule 12(7) of the Central Sales Tax Rules, 1957 read with Section 3(4) of the Central Sales Tax Act, 1956 within three months after the end of the period to which the declaration or the certificate relates and that as per Section 8 of the Central Sales Tax Act, 1956, every dealer, who makes interstate sales to a registered dealer, shall pay the tax at the concessional rate, provided that they shall produce Form-C declaration obtained from the prescribed authority of purchaser at the time of assessment. The learned Government Pleader further contended that on scrutiny of the returns filed by the dealer for the assessment years 2011-2012 and 2012-2013, it was found that the Petitioner has effected local sales of Oil by paying tax @ 4% and 3% for the assessment years 2011-2012 and 2012-2013 and that the Petitioner also made inter-state sale of Oil under Section 8(1) of the CST Act, 1956 to other States and paid tax at a concessional rate of 2% for the assessment years 2011-2012 and 2012-2013 and has made stock transfer against Form-F claiming exemption. The learned Government Pleader further contended that in order to avail concessional rate of tax, the Petitioner ought to have filed the declarations in Form-C/Form-F on or before 30th June of succeeding financial year as per Rule 12(7) of the CST (R & T) Rules, 1957 and that though sufficient opportunities were given to the Petitioner to furnish the declaration forms, the Petitioner has not furnished the requisite declaration forms and that once the final assessment order is issued to the Petitioner, it attains finality and it cannot be revised now and then. The

learned Government Pleader further contended that in order to collect the arrears of the tax, the 1st respondent herein has issued the impugned attachment notice to the Respondent Bank and that there is an alternative remedy of filing an appeal against the impugned orders and prayed for dismissal of this Writ Petition on these grounds.

6. This court heard and considered the submissions made by the learned counsel on either side and also perused the materials placed on record.

7. The Petitioner herein in these Writ Petitions, challenges the impugned orders relating to different assessment years in respect of attachment of their bank account for non-payment of tax. The claim of the Petitioner was rejected on the ground of delay in furnishing the declarations in Forms C and F. The Petitioner also made rectifications applications dated 13.07.2015 to the 1st Respondent under Section 73 of the Pondicherry Value Added Tax Act, 2007 read with Section 9(2) of the Central Sales Tax Act, 1956 in respect of the reliefs, as prayed for in these Writ Petitions.

8. Upon perusal of the Rules related to furnishing of Form C and Form F as provided under the Pondicherry VAT Rules, it is apparent that the time limit has been fixed. At the same time, it cannot be lost sight that the Central Sales Tax Rules does not provide for any time limit. Since the State being the authority to make its own Rules and the question is as to whether the Respondents would be justified in rejecting the claim of the concessional levy/exemption on the ground of non-furnishing of statutory forms within 90 days time fixed under the Act. Furnishing of the statutory forms is not within the control of the Petitioner and is dependent on the other State dealers' cooperation. If on sufficient cause, the Petitioner satisfies the requirements of law, then the claim cannot be rejected unjustifiably merely on the ground of belated submissions of statutory forms.

9. In the decision of the Full Bench of this Court reported in 51-STC-281 (State of Tamil Nadu Vs. Arulmurugan and Company), confirmed by the Honourable Supreme Court, it is stated that the belated Form C would be furnished even before the Appellate Authority on showing good and sufficient reason for failure to furnish Form C, within the time limit.

10. In the above circumstances, even though the Rule prescribes time limit under the Pondicherry VAT Rules, the issue involved in these Writ Petitions is covered by the order of this court reported in 51-STC-281 (State of Tamil Nadu Vs. Arulmurugan and Company), as the Petitioner also made rectification applications, satisfied with the claim of the Petitioner, this

court is of the view that the Petitioner can be given an opportunity to produce all the statutory forms for making appropriate assessment orders.

11. Accordingly, the impugned orders are quashed and the 1st Respondent is directed to consider the rectification applications of the Petitioner filed under Section 73 of the Pondicherry Value Added Tax Act, 2007 read with Section 9(2) of the Central Sales Tax Act, 1956 and rectify the errors, if any, on the face of the record and consider the statutory forms 'C' and 'F' filed by the petitioner online or manually, and pass appropriate orders, on merits and in accordance with law. The petitioner is permitted to produce all the statutory forms within two weeks from the date of receipt of a copy of this order and on such filing, appropriate orders be passed by the 1st Respondent within a period of six weeks from the date of receipt of the forms from the petitioner, without causing further delay. If the petitioner fails to avail this opportunity, orders be passed on merits, forthwith.

12. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

Srcm/rsb

To:

1.The Additional Deputy Commercial Tax Officer (IAC)
Room No.39, III Floor, 100 Feet Road, Pondicherry-5

2. The Branch Manager, Bank of India, Pondicherry.

1 cc to Mr.P. Rajkumar, Advocate, Sr. 11733

WP.Nos.40900 to 40905 of 2015
MP.Nos. 1 to 1, 2 to 2 and 3 to 3 of 2015

KJI (CO)
kk 7/3