IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.6.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.22537 of 2016
and WMP.No.19219 of 2016

M/s.Padmavathi Electricals rep.by its
Proprietor Mr.Deepak Kumar Nahar ...Petitioner

Vs

The Commercial Tax Officer,
Explanade Assessment Circle,
Chennai. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in CST 79809/2014-15 dated 29.4.2016 and the consequential order in CST 79809/2014-15 dated 18.5.2016 and CST 79809/2014-15 dated 27.6.2016 and quash the same.

For Petitioner : Mr.S.Raveekumar
For Respondent : Mr.S.Manohar Sundaram, AGP

ORDER

Mr.S.Manohar Sundaram, learned Additional Government Pleader takes notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter called the TNVAT Act) and the Central Sales Tax Act, 1956 (hereinafter called the CST Act), has filed this writ petition challenging the assessment order as well as the consequential orders passed under the provisions of the CST Act for the assessment year 2014-15.

3. The short ground, on which, the impugned orders have been challenged is by contending that Form I declarations produced by the petitioner were refused to be accepted by the respondent and that the respondent has proposed to revise the order of assessment solely on the ground that the declarations have been submitted belatedly, as they were not submitted along with returns.

4. In the impugned proceedings dated 27.6.2016, the respondent stated that as per the Proviso to Section 8(4) of the CST Act and as per Rule 12(7) of the Central Sales Tax (Registration & Turnover) Rules, 1957, declaration forms in Form C, F, E I and E II being filed subsequent to the orders passed could not be considered for revision of assessment under Section 9(2) of the CST Act, 1956 read with Section 84 of the TNVAT Act, 2006.

5. An identical issue came up for consideration before the Hon'ble Full Bench of this Court in the case of State of Tamil Nadu Vs. Arulmurugan [51 STC 381] wherein it has been held as follows :

> "16. We would proceed now to advert to the different ways in which the discretion to allow further time for filing C forms is conferred by the proviso to Section 8(4) of the Act, on the one hand, and the proviso to Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, on the other. The proviso in the Act simply says that the C forms shall be filed before the prescribed authority either within the prescribed time or "within such further time as that authority may, for sufficient cause, permit". As a matter of construction of the proviso in the statute, if there is sufficient cause, further time will have to be allowed. The proviso to the Section does not insist that the assessee should establish before the prescribed authority that he was prevented by sufficient cause from filing the C forms in time. The "sufficient cause" spoken of by Parliament in 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 assessee. The proviso to Rule 12(7), however, is a study in contrast. The power to allow further time under this rule is severely circumscribed by the language of its proviso. This proviso is more or less fashioned after Section 5 of the Limitation Act. Under the requirement laid down by the rule-making authority, the burden is on the assesse to make out sufficient cause by explaining why he did not file, and what prevented him from filing, the C forms before the completion of the assessment. What is more, it is for the assessing authority to be satisfied about the existence of sufficient

cause and its having prevented the assessee from filing the declarations within time. The difference between the two provisos is not merely one of language or of emphasis. The difference lies in the basic approach to the substance of the power to allow further time. Under the statutory provision, the prescribed authority can allow further time for sufficient cause, without bothering to see whether anything or any occurrence prevented the assessee from filing the C forms within time, and whether the assessee could have filed the C forms within time even in the position is which he actually found himself. The rule, however, casts the burden on the assessee and makes the position more difficult for him to invoke the power successfully. It also narrows down the discretion of the authority concerned. The question, however, is which is to be the master, the proviso in the Section or the proviso in the rule ? There can be no doubt about the legal position that a rule cannot prevail against the statute, by being repugnant to the statute. A study of the structure of the proviso to Section 8(4) shows how Parliament's peculiar preferences had worked in this regard. While Parliament was content to leave to the rule-making authority, namely, the Central Government, the task of prescribing a rule laying down the time-limit for furnishing C forms, the power to allow further time, however, was not relegated to the Rules, but deliberately enacted into the very text of the provisos to Section 8(4). In this statutory format, with Parliament clearly expressing its mind on the subject, the Central Government must be held to possess no authority whatever to make any rule as respects the power to allow further time, let alone prescribe the conditions subject to which any such power could be exercised. In this sense, the proviso to Rule 12(7) must be held to be ultra vires the rule-making power, to the extent that it is inconsistent with, or lays down tests or standards different from, the proviso to Section 8(4). It is quite clear that the proviso to Rule 12(7) is both superfluous and badly drafted. The indifferent drafting is all the more regrettable when the remember the legislative history which brought into the statute book the proviso to Section 8(4) as a necessary part of the taxing enactment. Avowedly, the proviso was introduced by Parliament in Section 8(4) to fill in the lacuna disclosed by the previous litigations in the country, culminating in the decision of the Supreme Court in Abraham's case . It is a matter for comment that Parliament's effort at clarity should have been neutralized, in part at least, by clumsy and unwanted rule-making. Be that as it may, we are clear in our minds that where an assessee seeks to file C forms beyond the stage of assessment, the relative power which the concerned authority should invoke is the power defined in the proviso to Section 8(4) and not the power defined in the proviso to Rule 12(7).

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 procedure or follow up action. Where the assessing 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 further time cannot be withheld on the excuse that there is not 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 the assessment."

6. The above referred to decision was followed by R.Mahadevan,J in Ultrust Solution (India) Pvt. Ltd. Vs. CTO [W.P.Nos.3084 to 3092 of 2016 dated 27.1.2016]. From the decision of the Hon'ble Full Bench of this Court, it is clear that the Authority is entitled to extend time to submit forms.

7. Furthermore, a reading of Section 9(2) of the CST Act shows that it is exhaustive and clearly specifies that the Authorities under the State Law can exercise all or any of the functions under the State for assessment, review, revision, re-convey measures, etc., for the purpose of assessment and recovery of tax due under the Central Act. Therefore, the respondent has power to invoke Section 84 of the TNVAT Act and revise the assessment under the CST Act.

8. In the light of the above referred to decisions, the finding rendered by the respondent in the impugned order dated 27.6.2016 calls for interference.

9. Accordingly, the writ petition is partly allowed, the impugned order dated 27.6.2016 is set aside and the matter is remitted back to the respondent for fresh consideration. The respondent shall accept Form I declarations given by the petitioner and thereafter proceed to pass revised orders in exercise of the powers conferred under Section 9(2) of the CST Act read with Section 84 of the Act. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Explanade Assessment Circle, Chennai.

+1cc to Mr.S. Raveekumar, Advocate, S.R.No.37322
+1cc to Government Pleader, Advocate, S.R.No.37514

PPA(CO)
EU(26/07/2016)

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