IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.22191 to 22193 of 2004

&

WMP.Nos.26879 to 26881 of 2004

Pooja Sago and Starch Products Pvt Ltd.
... Petitioner in W.P.No.22191/2004

Tvl.Seema Sago and Starch Products
... Petitioner in W.P.No.22192/2004

Sri Pal Starch Manufacturers
... Petitioner in W.P.No.22193/2004

Vs.

The Commercial Tax Officer,
Annathanapatti Circle,
Salem. ... Respondent in all W.Ps.

Common Prayer:

Petitions filed under section 226 of the Constitution of India to issue Writ of Certiorarified Mandamus calling for the records of the case on the file of the respondent herein in R.O.C.Nos.672156/2000-2001, 672064/2000-2001 and 710025/2000-2001, dated 22.4.2004 relating to the respective petitioner, quash the same and direct the respondent to consider the petition dated 19.4.2004 to receive the C Forms under Section 9 (2) of the Central Sales Tax Act, 1956 read with Sec 55 of the Tamil Nadu General Sales Tax Act, 1959.

For Petitioners : Mrs.Lakshmi Sriram
for M/s.R.V.Chitra Associates
For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader (Taxes)

C O M M O N   O R D E R

Heard Mrs.Lakshmi Sriram for M/s.R.V.Chitra Associates, learned counsel for the petitioners and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), appearing for the respondent.

2.In all these three writ petitions, the petitioner has challenged the order passed by the respondent dated 22.04.2004, which is virtually a single line order by which, the petitioners application filed under Section 55 of the Tamil Nadu General Sales Tax Act, 1959, has been rejected on the ground that the petitioners have not produced the book of accounts for the relevant year. Hence, the petitioners application along with enclosures are returned.

3.Section 55 of the Act gives power to the Assessing Officer or the Appellate Reviewing Authority including the Appellate Tribunal, at any time within five years from the date of any orders passed by it, to rectify any error apparent on the face of the record.

4.In the instant case, it is an admitted fact that though the petitioners received the pre-revision notice and sought for four weeks time to produce the 'C' Form Declarations vide their letter dated 10.05.2002, they failed to produce the same and therefore, the respondent completed the assessment on 14.11.2003.

5.The question would be as to whether the power under Section 55 of the Act is a power of review or only a rectification. Admittedly, the impugned order of assessment passed by the respondent was an exparte order and the reason for completing the assessment was largely due to the fact that the petitioner failed to produce the 'C' Form Declarations.

6.It is by now fairly well settled that the declaration forms to avail concessional rate of tax could be produced by the dealer at any time during the course of assessment or thereafter and if those forms are produced, then the Assessing Officer would be required to redo the assessment. Infact, there is a recent circular issued by the Commissioner of Commercial Tax to the said effect, wherein a liberal approach has been directed to be taken in matters relating to production of such forms for availing concessional rate of tax.

7.According to the petitioners, their inability to produce the 'C' Forms at the appropriate time was for reasons beyond their control. Therefore, as soon as the forms were available, the petitioners submitted the petition under Section 55 of the Act requesting the Authority to consider the 'C' Forms and redo the assessment. However, this application has been returned solely on the ground that the petitioners did not produce the acknowledgement at the time of assessment for the relevant years. It may be true that the petitioners have not produced the book of accounts at the relevant time. But nevertheless, now they seek for production of the 'C' Form which have come into their custody subsequently.

8.In the above facts and circumstances, this Court is of the view that the respondent should be directed to consider the petition filed for rectification along with the 'C' Forms.

9.Accordingly, the writ petitions are allowed and the impugned orders are set aside and the petitioners are directed to represent the petitions filed under Section 55 of the Act along with the enclosures, which shall be considered on merits and in accordance with law. In the event, the petitioners had complied with the conditional stay order granted on 05.08.2004, appropriate further orders shall be passed by the Assessing Officer subject to the orders to be passed in the application under Section 55 of the Act.

10.The writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

The Commercial Tax Officer,
Annathanapatti Circle,
Salem.

+3 CC to Mr. Lakshmi Sriram , Advocate Sr.No.50692
+1 CC to the Special Govt., Pleader (Taxes) Sr.No.50450

W.P.Nos.22191 to 22193 of 2004

KK (CO)
MD : 21/09/2016